Comment on CDFI Certification Requirements

Credit Builders Alliance (CBA) is submitting a public comment regarding the current policies and procedures to certify an organization as a Community Development Financial Institution (CDFI). The comments specifically relate to the modification of section C- *Financing Entity*.

CBA believes that an additional requirement #13 should be included in this section. Suggested wording is as follows:

"C 13- An organization applying for CDFI certification should be required to either be currently reporting their loan portfolio to a major credit bureau or be in the process of getting credentialed to do said activity. In order to maintain their certification status, the CDFI needs to be actively reporting their loan portfolio to a major credit reporting agency (CRA) or in the process of becoming certified as a data furnisher to a CRA."

CBA was founded for and by CDFIs to fill a critical gap – the ability to help consumers and entrepreneurs to build a credit history. A primary obstacle to loan reporting for small lenders has been the loan portfolio size threshold requirement of the major Credit Reporting Agencies (CRAs). Before CBA, if a lender did not meet the size requirement for the major CRAs, it was not allowed to report. However, through a groundbreaking arrangement with CBA, non-profit lenders can now become credentialed to report, regardless of the size of their portfolio. Currently CBA provides ongoing capacity building to 463 nonprofits located across the country. Almost one-third of CBA members are nonprofit CDFIs (including many Native CDFIs) that provide financial products and services directly to consumer and small business borrowers in an effort to help them achieve and sustain financial stability.

In today's economy, the credit report is a financial resume. It is a collection of behavioral indicators widely recognized by the mainstream financial system (i.e. credit utilization rates, payment behavior, etc.), which are used to track and predict behavior and influence access to safe and affordable mainstream financial products. Credit scores, as aggregate measures of financial behavior, are used to define the cost and access to capital and other business services (insurance, wireless, merchant services, utilities).

Unfortunately, for many of the 64 million Americans with no or thin credit files, the ability to establish a good credit history is hampered by lack of access to affordable mainstream credit building financial products. A disproportionately large number of these individuals are low-income and many live in areas underserved by traditional financial institutions but thankfully **are** served by CDFIs.

Credit invisibility means fewer economic opportunities, when, in fact, low- and moderate-income individuals, families and small businesses need more financial options not less. CDFIs can play an important part in helping their borrowers become credit "visible."

Comment on CDFI Certification Requirements

CBA has evidence that reporting loan data to the major CRAs is beneficial. First, an analysis conducted by Experian® in 2014 showed that credit reporting increased CBA lender members' client access to safe and affordable mainstream credit products (thicker credit report files) and increased their credit scores.[1] Second, over half of CBA lender members responded to a CBA survey in winter 2016 confirming the benefits to them, in addition to their borrowers, of credit reporting. They indicated that reporting loans improved the quality of their loan portfolios -- decreased charge-off rates and increased on-time payments -- by providing clients with a positive incentive to make their payments on-time. The results also showed a significant increase in clients' interest in improving their credit history.[2]

Despite the compelling evidence about the benefits of credit reporting for both the borrower and the lender, many CDFIs are still not reporting their loan portfolios and helping their borrowers build credit. Especially among the nonprofit CDFI loan funds, who offer direct lending to individual consumer and small businesses borrowers, reporting to the CRAs is not the norm. And since credit reporting is voluntary, without having an incentive to report to the major CRAs, 51% of the CDFIs surveyed by CBA opted not to do so.[3]

CBA has learned that many of the perceived barriers to credit reporting are based on lack of knowledge about their options (i.e. believing their portfolio is too small to be allowed to report) or concerns that can easily be overcome (i.e. staff needs training). The inclusion of "credit reporting" as a CDFI credentialing requirement would increase the number of CDFIs reporting their loan portfolios by raising the awareness of the opportunity to do so.

Currently many of the larger CDFI credit unions and CDFI banks already report to the major CRAs. So for them, this new requirement would already be satisfied, and thus not a burden. However, adding this requirement could exponentially increase the number of CDFIs who would become data furnishers with minimal burden issues.

Given how influential credit histories and scores are on hundreds of millions of U.S. households in today's economy, it is an imperative that all CDFIs report their direct consumer and small business borrowers' loans to at least one major credit bureau to ensure that the latter are able to join the financial mainstream.

The signatories of this letter are CBA lender members who are joining forces with us to demonstrate their commitment to credit reporting. The following list reflects the many CDFIs who have willingly signed onto this letter.

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[1] 2014 Experian® data analysis, using VantageScore 3.0®, to assess the impact of credit reporting by CBA members reporting their loans through CBA.

[2] 2013 CBA membership survey

[3] Credit Reporting Survey conducted by Credit Builders Alliance from June 26th – July 18th, 2016, which included recipients of CDFI Fund FA grants.

Comment on CDFI Certification Requirements

1. Center for Community Development for New Americans
2. Working Credit NFP
3. Cleveland Neighborhood Progress
4. Capital Good Fund
5. Latino Economic Development Center (LEDC)
6. Northwest Access Fund
7. Washington Area Community Investment Fund (Wacif)
8. Northwest Native Development Fund
9. Seattle Economic Development Fund
10. Hunkpati Investments
11. Community Investment Collaborative
12. The Enterprise Center Capital Corp
13. Indiana Credit Establishment Foundation
14. Build Wealth MN
15. Main Street Launch
16. North Carolina Rural Economic Development Center, Inc.
17. Newberry Habitat for Humanity
18. UCEDC
19. New Mexico Community Development Loan Fund
20. Mission Asset Fund
21. Fresno CDFI
22. The Sequoyah Fund, Inc.
23. Covenant Community Capital
24. Women's Economic Self-Sufficiency Team Corp
25. AltCap
26. Latin American Economic Development Association, Inc.
27. RDI Financial, Inc.
28. Justine PETERSEN
29. Refugee Women's Network, Inc.
30. Miami Bayside Foundation, Inc.
31. Chi Ishobak, Inc.
32. NCJW St. Louis
33. Turtle Mountain CDFI
34. WomenVenture
35. Maui Economic Opportunity, Inc.
36. Kentucky Coalition Against Domestic Violence
37. Business Center for New Americans
38. Innovative Changes

From: Laurie Glasgow-Gill [mailto:LGlasgow-Gill@mercyhousing.org]
Sent: Tuesday, February 14, 2017 12:43 PM
To: CDFIHELP <C2@cdfi.treas.gov>
Subject: [EXTERNAL]Response to Request for Information on CDFI Certification

Attn: David Meyer
Certification, Compliance Monitoring and Evaluation Manager

Below is Mercy Loan Fund's response to the CDFI Fund's request for information on the CDFI Certification process. We are responding to two of the seven criteria.

Development Services
As a lender to developers of affordable housing, Mercy Loan Fund's Development Services are not as structured as those of a CDFI that lends to individuals or small businesess. In our work, Development Services take on the form of educating borrowers during the underwriting process and also working with borrowers on extensions and restructures of their existing loans. Our Development Services are not tied to a specific financial product. For these reasons, we recommend continuing with the broad definition of Development Services.

Accountability
Mercy Loan Fund agrees that a CDFI maintain accountability to its Target Market through representation on its governing board and/or advisory board. As a national lender, our Board of Directors, located throughout the United States, represent low income communities through their work supporting low income individuals. As a CDFI that has lent in 39 states, it would not be feasible to have advisory boards in all the geographic areas it serves.

Laurie Glasgow-Gill
INVESTOR RELATIONS MANAGER | Mercy Loan Fund

Mercy Housing
1999 Broadway, Suite 1000
Denver, CO 80202
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mercyhousing.org | mercyloanfund.org

mercy LOAN FUND

Join our mailing list

From: Jasemin Sibo [mailto:jasemin78@hotmail.com]
Sent: Monday, February 27, 2017 12:33 PM
To: CDFIHELP <C2@cdfi.treas.gov>
Subject: [EXTERNAL]CDFI's RFI - New wave of independent filmmaking, creative communities and marginalized talents

Dear David Meyer (Certification, Compliance Monitoring and Evaluation (CCME) Manager, CDFI Fund),

This email is my feedback to CDFI's recent request to obtain insights on CDFI's core goals. My feedback is targeted at the independent filmmaker/production house communities specifically and how CDFI can broaden its current scope to include this sunrise industry.

This is not an exhaustive list, but more of my personal opinion based on my 15 years of corporate experience, Master's degree in International Business and recent graduation from the New York Film Academy where I obtained a CGPA 4 grading. My LinkedIn profile here https://www.linkedin.com/in/jasemin-sibo-67b42527/

I applaud CDFI's efforts in not only governing but nurturing and directly assisting in certified CDFI entities. The ability to harness the power of a community brings tremendous positive results to the nation and the 'USA' brand as a whole.

My feedback below: -

- As the independent filmmaking sector largely involves the production of an intangible asset being content, branding, advertising, national & international goodwill, cultural & heritage preservation etc. the primary mission test should be customized to fairly assess its credibility and merits. E.g. endorsements from film festivals, film academies, film critics, film instructors, industry veterans etc.
- Due to the unique nature of this sector, the key criteria for serving this sector and target populations should be demonstrable deep passion including verified leadership roles, at least 1 proprietary (copyright) short production filmed in USA within the last 2 years, volunteer work with not-for-profit creative communities, at least 1 directorial debut with marginalized/under served communities.
- In reciprocity, the CDFI should show accountability to its target market through periodic progress reports, risk registers, community & stakeholders engagement meetings etc.

I am happy to elaborate more on the above if need be. Thank you.

With thanks,
Jasemin Sibo Ho
Artist, Author, Filmmaker
Http://www.jaseminsibo.com

homewise®
your partner in homeownership

February 28, 2017

David Meyer, Certification, Compliance Monitoring and Evaluation Manager
CDFI Fund
Via Email: cdfihelp@cdfi.treas.gov

Dear Mr. Meyer:

Thank you for the opportunity to submit feedback regarding CDFI Fund's process for certifying CDFIs and in particular the Target Market and Accountability tests. Homewise is a certified CDFI and 501(c)(3) non-profit organization. Our mission is to create successful homeowners so that they improve their financial security and contribute to the vitality of their communities. We provide loans for home purchase, home improvement and refinance combined with comprehensive development services. Homewise would like to offer the following comments in response to your Request for Information.

Regarding your question: *CDFIs currently are approved to serve Targeted Populations within defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?*

Yes, Homewise believes that all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally. This change would help mitigate the disincentives to growth that are created by the current Target Market certification requirement. Many CDFIs have moved beyond a traditional place-based, retail branch location model and are exploring new and innovative ways to deliver financial products, financial services and development services to households who are not well-served by the traditional marketplace. Homewise is doing just that, developing partnerships with other CDFIs and community development organizations across the country to provide better access affordable mortgage financing and exploring options for delivering our services remotely. These partnerships and innovations take shape relatively quickly and offer great potential to increase access to capital to Targeted Populations. The requirement to request a change to our geographic service area with each new partnership and remote delivery market creates a barrier to our growth or a challenge to Homewise's continued ability to meet the Target Market test. Capturing all of our lending to eligible Target Populations, regardless of geographic area, would accurately measure our impact and would reflect the changing needs of borrowers who increasingly expect to be able to access services and products via the internet and or phone.

tel 505.983.WISE (9473) 800.429.5499 **fax** 505.983.4655 1301 Siler Road, Bldg. D Santa Fe, New Mexico 87507 www.homewise.org

Regarding your question: *Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?*

Homewise believes the accountability test should be rethought completely. CDFIs should not have to demonstrate accountability through board membership or through other artificial means. Successful organizations by definition are accountable to the needs of their constituencies. If they did not respond to those needs, they would not thrive or even survive. As an example, consider the for-profit sector. These private businesses are not expected to have multiple committees representing every type of customer they aim to serve. Rather, their responsiveness to their customers' needs is demonstrated in their success as a business. Why should non-profit organizations, including CDFIs, be expected to follow a different and more cumbersome model? Demonstrating our successful deployment of funds to Target Market areas and populations is sufficient evidence that we are responding to Target Market needs. We are accountable to our clients through our products and services and our ongoing existence requires that we effectively meet their needs.

Should the CDFI Fund decide to keep an accountability test, we believe that test should include other options besides board membership. For CDFIs who follow a limited place-based development strategy and mission, the board-member accountability test is easy to adopt. However, that place-based model is just one of many business models employed by innovative CDFIs who are exploring new ways to deliver financial products, financial services, and development services to households not well served by the traditional market. For a CDFI that is growing geographically, it is unrealistic to expect that we could add a board member from every area that we serve or intend to serve. Moreover, as CDFIs become more sophisticated and complex, it is critical that their board membership reflect the skills and experience necessary to provide adequate oversight and guidance. Requiring a CDFI to recruit board members from specific geographies detracts from its ability to recruit for the skills and knowledge needed to fill potential gaps in their Board's collective expertise. We believe the mechanisms that had previously been allowed, such as customer surveys and advisory committees, provide effective accountability. In addition, other mechanisms such as partnerships with community lending or development organizations and demonstrated outreach to community groups would provide the level of accountability sought by the CDFI Fund.

Regarding your question: *Currently the CDFI Fund allows Investment Areas to be composed of a set of contiguous geographic units that may include a small portion of units that individually do not qualify as Investment Areas. Should the CDFI Fund continue this practice, or should all units within the Investment Area meet the Investment Area qualifications?*

Homewise believes that the requirement for Investment Areas should be rethought altogether. The requirement that the Investment Areas be contiguous census tracts that meet distress criteria (with a limit on the percentage of population in a non-qualifying tract) is overly complicated. CDFIs are incentivized to try to piece together Investment Areas that meet the distress and contiguity requirements instead of focusing their investment on the areas with the most potential for positive impact. As a result, tracts that are distressed but not adjacent to other distressed tracts are left out of Investment Areas, which does not serve the goals of the CDFI Fund program. CDFIs want to target our investments to the borrowers and neighborhoods that are in most need of that investment, not to the census tracts that will score better in our Target Market certification. If the goal is to spur the deployment of funds into disinvested areas, it would suffice to include any distressed tract within the CDFI's service area as an Investment Area, without regard to is contiguity with other distressed tracts. We find this is particularly important for mortgage lenders. We do not decide where to deploy our funds: rather, our clients do so by choosing the home they want to buy. While we may target our outreach efforts to Target Market populations and Investment Areas, we would never decline a borrower's loan because they want to buy outside of our Investment Area, nor would we steer them away from their preferred location. When our buyers purchase in a distressed area, their investment of capital, along with their energy as homeowners and neighbors, helps to revitalize and stabilize those areas. This is of value in any distressed tract, regardless of that tract's contiguity to another distressed tract.

On behalf of Homewise, thank you for considering our input. We greatly value our relationship with CDFI Fund. The resources you have provided to Homewise have made a significant impact in our communities and for the families who achieve homeownership with the help we provide because of CDFI Fund. If you have any questions about Homewise or the input we have provided please do not hesitate to contact me at 505-780-4296 or epowell@homewise.org.

Sincerely,

Emilee Powell
Special Projects Manager

March 3, 2017

Mr. David Meyer
Certification, Compliance Monitoring and Evaluation (CCME) Manager
CDFI Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20005

Re: Comments on CDFI Certification

Dear Mr. Meyer:

The Native CDFI Network is a coalition formed in 2009 to unify Native CDFIs serving American Indian, Alaska Native, and Native Hawaiian communities. Its purpose is to create opportunities to share our stories, identify our collective priorities, and strengthen our industry. NCN's mission is to be a national voice and advocate that strengthens and promotes Native CDFIs creating access to capital and resources for Native people. We are pleased to respond to the CDFI Fund's Request for Comments on CDFI Certification.

Native CDFIs are serving some of the most underserved communities in the country and therefore provide the ability to improve the local economy and the lives of the individuals in these communities. Due to the high-risk nature of lending in tribal communities because of sovereignty and tribal trust land matters, funding from outside resources continues to be a barrier, making CDFI ongoing support for Native CDFIs critical. NCN offers some refinements to the NACA certification process below, to ensure that as many Native CDFIs as possible, within the intended scope of CDFI Fund Native Initiatives regulations receive certification.

- **Defining "Native" CDFI.** NCN has developed the following expanded definition of the term "Native" CDFI that could help more Native CDFIs become certified:

  Recommended Definition of a Native CDFI: A Native American CDFI is a CDFI, as defined in section 103(5) of Public Law 103-325 (12 U.S.C. 4702) that **primarily serves** a **Native Community.**

  "**Primarily Serves"** is defined by the CDFI Fund in the CDFI certification materials as 50 percent or more of a CDFI's services or activities.

This expanded definition is of particular importance to CDFIs termed as "Native" CDFIs in Hawaii. There are CDFIs, mostly credit unions, in Hawaii who are claiming to be "Native CDFIs" because they are serving Native Hawaiians. The term "Hawaiian" is defined by many government agencies, including the CDFI Fund as: 1a. A Native Hawaiian, or 1b. A native or inhabitant of the Hawaiian Islands or the state of Hawaii. This allows some emerging CDFIs in Hawaii to be eligible for the Native Initiatives Program and monetary set aside. However, most of these emerging CDFIs are not serving 50 percent "Native Hawaiians," which is defined as "…the **indigenous** Austronesian (Polynesian) people of the **Hawaiian** Islands or their descendants. **Native Hawaiians** trace their ancestry back to the original Polynesian settlers of **Hawaii**." They are using the term "Hawaiian" in such a way that currently allows them to be eligible for the Native Initiatives Program when in reality, they are not serving the requisite numbers of Native Hawaiians. The definition provided above would remove this unintended consequence.

- **Lack of understanding of AMIS recertification requirements.** Native CDFIs whose recertification date came after the AMIS system was put into use, were unaware of the system and how to utilize it. Instead, they used the only tool they knew, excel spreadsheets which had formulas where they added their information and results were auto populated. Native CDFIs who were certified under the old system, and then had to recertify under the new and foreign AMIS system thus found it difficult to navigate the AMIS system in many areas, especially in the mapping area. Indeed, they often had to turn to consultants to help them complete the recertification process. In addition, no formal training was offered for recertification under AMIS.

- **Match requirements.** NCN's members feel strongly that non-federal match requirements should be waived for NACA Financial Assistance applications. Understanding that this is a statutory requirement, NCN urges the CDFI Fund to consider requiring match documentation only upon award selection rather than at the time of application. This would minimize the application burden.

- **Opportunity for de-brief.** Over the years, many unsuccessful CDFI certification applicants have sought feedback from the CDFI Fund about how to make their NACA applications more competitive with a greater likelihood of certification. This is a common practice with other federal agencies. NCN urges the CDFI Fund to provide either written or oral feedback about strategies to improve future applications.

In summary, the new FY 18 NACA certification requirements could be modified to address the issues explained above to make it fair and to provide a streamlined process for recertification. Regardless, NCN and its members appreciate all the efforts of the Native Initiatives staff to be as responsive as they have been to date to questions during the application process and to provide clarity wherever possible.

NATIVE CDFI NETWORK

We hope that the next application will incorporate the revisions recommended above. Thank you once again for this opportunity to provide our comments.

Sincerely,

Tanya Fiddler

Tanya Fiddler
Executive Director

Comment on CDFI Certification Requirements
NCUA Talking Points with the CDFI Fund
March 6, 2017

Primary comments

- An entity that demonstrates it meets the requirements should be certified a CDFI.
- No minimum time requirement to be a CDFI.
- The streamlined certification process for credit unions should not be eroded by changes in the standard certification process. The responses above generally apply to credit union applicants under the standard application.

Regulated entities

- The certification process should minimize the burden of providing information redundant to that collected by regulatory agencies. In the case of credit unions, for example:
  - Legal Entity status can be confirmed online, no additional documentation should be required.
  - Low-income designation should continue to be sufficient to meet the Primary Mission requirement.
  - Special provision for Accountability should apply to all federally insured credit unions as their board members are elected annually by the membership.
- Allow smaller geographies to be considered in the evaluation of Target Market for low-income designated credit unions. Block-level, per LID tool

Beware not to dilute the CDFI certification brand

- Current certification requirements and thresholds generally are sufficient and they are well-established.
- Limit the addition of new thresholds such as a minimum number of amount of financing activities.
- Certification process should generally be equitable, not more onerous on one category than another.
- Non-regulated corporate entities should have to demonstrate qualification based on entire corporate structure just like Depository Institution Holding Companies, including subsidiaries and affiliates.
- Certification standards should generally not differ by applicant type such as for-profit vs. non-profit, or regulated versus non-regulated.
- Entities that don't meet all requirements should not be certified, including those:
  - for which financing activities are not a plurality (Financing Entity);
  - that haven't been lending for at least one year (Target Market);
  - only service loans or provide equity investments (Financing Entity); or
  - are web-based lenders.
- Non-arms-length transactions should not count toward certification.
- Definition of Development Services and Non-government Entity standards are sufficient as is.

- Entities should not be allowed to "self-designate" as Native CDFIs, there should be quantitative factors for meeting this standard as with all other requirements.

Policy issues

- National Target Markets: An entity should only be certified for those Target Markets it demonstrates it can reasonably serve.
    - It must serve all not just parts of the country.
- Statistical sampling would likely benefit many entities providing the CDFI Fund provides How To guidance.
- Financial Services should be included in the evaluation of Target Market.
    - The number of individuals receiving such services and hours of services provided are some quantitative indicators that could be considered.
- Outstanding portfolio should not be considered in the evaluation of Target Market, it may not be reflective of current lending practices or product demand.
- Entities that propose to meet Accountability through "end-users" must show they obtain and use the input of such users in product/service delivery.
- NCUA does not have a position on:
    - The definition of "similar financing activities." What has been accepted in the past?
    - Additional Other Targeted Populations.
    - Additional Non-government Entity factors or considerations.

Questions

- Can a national Investment Area be designated? How would this be operationalized?
- What additional Other Target Populations might there be?

Feedback on CDFI Fund Certification Tests

Topic: Serves an Investment Area or Target Population
Is the current standard that 60% of a CDFI's Financial Product activities must be in qualified Target Markets the right standard?

60% is a reasonable standard but there are factors that can distort performance. For example, a few high dollar loans well above the average loan size can throw off compliance in terms of dollars over a shorter period. In our case, because we do a smaller number of short-term bridge loans on large SBA 504 projects, this can happen. These loans, while consistent with a mission to provide small business capital where it is underserved and needed, may not qualify under our current approved target market and throw off the percentage in terms of dollars, although over a longer period this would likely even out. Therefore, we would recommend looking primarily at units and have flexibility on dollars with an explanation such as the example listed above.

The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this the appropriate time period to consider, or should a longer period of time be considered?

We recommend that the time frame should be longer to reflect a larger body of work for the CDFI and that there be flexibility in terms of timing. We recommend being able to meet this standard <u>either</u> through an average % of activity over multiple years, <u>or</u> the average % over the last completed fiscal year.

Topic: Target Population & National Target Markets
CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?

Yes. Target markets should be expanded easily to serve more disadvantaged populations, including serving Targeted Populations nationally. For us, serving nationally would not happen soon, but being able to serve a neighboring state in terms of a target population without formally expanding the target market would be helpful.

What % of a CDFI's board members should satisfy accountability rules? Should different % apply to different boards?

Boards have different roles and purposes, so whatever percentage is used should be able to be met through either the governance or advisory board. Advisory boards provide valuable input into our developmental services and our Target Market. Their insight on our programs and products directly influence how we work with our Target Market, so they are critical in accountability, while our governance board focuses mainly on governance and financial oversight. If both have to have a percentage in terms of accountability, the governance board requirement should be lower.

Is representation on an advisory board sufficient to demonstrate accountability?

Yes, representation on an advisory board is sufficient accountability to the Target Market.

Topic: General Certification Question: *"Community-based" is a term often used to describe CDFIs. How should "community-based" be defined and what does it mean for CDFIs to be "community based"?*

Community based can be defined as working at a local level to provide services to improve the quality of life for residents in disadvantaged areas or providing financial products and developmental services to serve the needs of locally disadvantaged communities and small business owners.

RFI Certification Comments

March 8, 2017

Mr. David Meyer, CCME Manager CDFI FUND

Dear Mr. Meyer:

Please find out comments below in blue. If you would like to contact us, please reach out to Patricia Tagarello at ptagarello@cdt.biz, 212 271 5015.

These new technologies create the potential for mission-driven organizations like CDFIs to extend their reach and impact in order to improve access to financial products and services for underserved communities and populations wherever they are. This raises questions, however, of whether CDFI certification— particularly in terms of a CDFI's ability to define a Target Market and demonstrate accountability to that Target Market—is currently designed to enable such scope, which was neither possible nor envisioned when the criteria were first established.

I. Certification Criteria

A. Legal Entity: To satisfy the legal entity test, the CDFI Fund requires evidence of an Applicant's incorporation/organization/ establishment, such as IRS documentation, establishing documents filed with appropriate authorities, or charter numbers for Insured Depository Institutions and Credit Unions at the time of certification application.

1. The statute does not indicate how long an organization must be in existence to be considered a ''person (other than an individual).'' Should there be a minimum period of time an organization should be in existence before applying for CDFI certification? If so, how long? If not, why not? Yes, we believe that a track record of at least two years should be required, however, there should be allowances for special exceptions where a startup is being developed and can demonstrate sustainability.

2. Is there additional documentation, beyond an organization's establishing documents filed with State jurisdictions, that should be accepted to demonstrate that an organization is a legal entity? No comment.

B. Primary Mission: The statute states that a CDFI must have ''a primary mission of promoting community development,'' but specifies few criteria for meeting that test. The CDFI Fund currently allows Applicants for certification to meet this test by providing board-approved organizational documents that demonstrate that the Applicant has a primary mission of promoting community development along with a narrative statement describing how the Applicant's mission is consistent with the CDFI Fund's and a brief description of Financial Products offered. Insured Credit Unions that have received a Low Income Designation from the National Credit Union Administration are deemed to have met this criterion by virtue of their designation.

1. Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate an Applicant's primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund provide a more explicit, possibly quantitative, definition of what it means to ''promote community development'' that Applicants would be required to meet? If so, what should be the definition and what test should be applied? Are there criteria that the CDFI

Fund should not consider and why? No. Arbitrary quantitative measures do not seem necessary.

2. Should there be different standards for meeting the primary mission test for nonprofit versus for-profit organizations, particularly for-profits that are not Insured Depository Institutions? If so, what different standards should be applied? We believe that both nonprofits and for-profit organizations should meet similar standards for meeting mission tests.

3. What evidence can the CDFI Fund use to confirm an Applicant’s adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose actions do not demonstrate intent to create community development and/ or are predatory in nature? Community development mission should be clearly stated in organization’s mission statement and possibly organizational documents.

4. To what extent should the CDFI Fund evaluate the Financial Products and/or Financial Services offered by an Applicant to determine its ability to meet the primary mission test? What test would the CDFI Fund apply in any such evaluation of Financial Products and/or Financial Services? CDFI Fund should request descriptions of product offerings to determine applicability.

5. Currently, by statute, Depository Institution Holding Companies wishing to be certified as CDFIs must provide documentation that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test. Should the CDFI Fund also make this a requirement for Non-Regulated CDFIs, for example, a Non-Regulated for-profit financial institution? Why or why not? No. Primary mission test of requesting organization should be sufficient.

C. Financing Entity: Insured Depository Institutions and Credit Unions are deemed to automatically meet this criterion. Non-Regulated CDFIs must demonstrate that they engage in direct financial activity (e.g., the provision of Financial Products, Financial Services, and Development Services) as reflected on financial statements and executed notes, and must dedicate a predominance of their assets to Financial Products, Development Services, and/or similar financing.

1. The CDFI Fund does not currently define the term ‘‘predominance,’’ but in practice accepts a plurality of assets as meeting this criterion. Should the term ‘‘predominance’’ be defined more specifically, and if so, how? No, predominance should be easy enough to determine.

2. Should entities that provide less than a plurality of financing activity ever be considered Financing Entities? If so, under what circumstances and is there a minimum level of activity that should be required? No comment.

3. Currently, the amount of assets and staff time dedicated to financing activities are used to measure the level of a CDFI’s financing activity. How else could a CDFI’s level of financing activity be measured? No comment.

4. For Non-Regulated CDFIs, is the current ''predominance of assets'' test appropriate, or should alternatives or additional considerations be permitted? No, predominance should be easy enough to determine.

5. Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission driven Subsidiary as part of the assessment of the parent CDFI's financing activities? Yes, sometimes the creation of a subsidiary is necessary to meet state or local regulatory requirements.

6. Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities? Yes.

7. Should an organization applying for CDFI certification be required to transact a minimum number or dollar amount of loan or equity investments to be considered a financing entity? Should the Applicant be required to have at least one or more years of loan or equity investment origination? If so, what should those rules be? Yes, a two-year track record.

8. Should an organization that only services loans or Equity Investments or has very few transactions be considered a financing entity? No.

9. Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status? Yes.

10. Currently, non-arms-length transactions do not contribute to meeting the financing entity criteria. For example, transactions made with Subsidiaries and/or Affiliates are not considered to be arms-length transactions. Should some transactions with Affiliates be permissible as evidence of an organization being a financing entity? If so, which ones? How should an ''arms-length transaction'' be defined? Non arms-length transactions need to show relationship to underlying community development transactions to be considered.

11. Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not? No, not if conditions of 11 above are met.

12. Current CDFI Program regulations use the term ''similar financing activities'' in its definition of the term ''Financial Products.'' How should the CDFI Fund determine what is included in ''similar financing activities?'' Review descriptions.

D. Serves an Investment Area or Targeted Population: Applicants for certification must identify the Investment Area(s) and/or Targeted Population(s) they intend to serve as their Target Market.

1. Threshold Target Market Test: Although no threshold level of service is indicated in the statute or regulation, current CDFI Fund policy requires that an organization must serve at least one eligible Target Market and must direct at least 60 percent of all of its Financial Product activities to one or more eligible Target Market to qualify for certification. In general, both the number and dollar amount of the organization's Financial Product activities should be at least 60 percent of all of its Financial Product

activities in the most recent fiscal year. If an organization does not meet the 60 percent threshold in terms of either number or dollar amount of transactions (but not both), the organization can provide an argument as to why the figure is less than 60 percent and the CDFI Fund reserves the right to accept or reject the explanation.

a. Is the current standard that 60 percent of a CDFI's Financial Product activities must be in qualified Target Markets the right standard? If not, what percentage of transactions should be in and/or to a qualified Target Market to demonstrate that an organization serves that Target Market and why? 60%, or less with supportable explanations seems appropriate.

b. Should there be different thresholds for different institution types (i.e., Insured Depository Institutions and Credit Unions, nonprofit loan funds, and venture capital funds)? No.

c. The CDFI Fund currently relies on self-reported summary data submitted by Applicants to demonstrate that they meet the Target Market threshold test. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving? No, overkill.

d. The August 31, 2015 Interim CDFI Program Regulations added the provision of Financial Services as a means of demonstrating that an applicant serves a Target Market. However, the CDFI Fund does not currently have a method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured? If an Applicant requests credit for providing Financial Services, should there be a separate minimum level of Financial Products that must be provided by the Applicant? No comment.

e. The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this the appropriate time period to consider, or should a longer period of time be considered? If so, should the applicant be required to meet the threshold in each year of the test, for a time period, or should an average be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding? No comment.

2. Investment Areas: The statute requires that an Investment Area must meet at least one of the economic distress criteria (poverty rate greater than 20 percent; Median Family Income (MFI) at 80 percent or below specific MFI benchmarks; unemployment rate 1.5 times the national average) and has significant unmet needs for Financial Products and Services, or is wholly located within an Empowerment Zone or Enterprise Community.

a. The CDFI Fund's current practice is to define Investment Areas that are composed of one or more units of geography that meet certain distress criteria. Units include but are not limited to counties, census tracts, and Indian Reservations. Should the CDFI Fund change this practice? If so, how? No.

b. Currently the CDFI Fund allows Investment Areas to be composed of a set of contiguous geographic units that may include a small portion of units that individually do not qualify as Investment Areas. Should the CDFI Fund continue this practice, or should all units within the Investment Area meet the Investment Area qualifications? No comment.

3. Targeted Populations: Targeted Populations include Low Income Targeted Populations (LITP) and Other Targeted Populations (OTP) for a specific geographic unit. LITP, for a specified geographic unit, by statute includes individuals whose family income (adjusted for family size) is 80 percent of the area MFI (for metropolitan areas). LITP in nonMetropolitan Areas is the greater of 80 percent of the area MFI; or 80 percent of the statewide non-Metropolitan Area MFI. The CDFI Fund currently includes, for a specific geographic unit(s), African-Americans, Hispanics, Native Americans, Native Alaskans, Native Hawaiians, and Other Pacific Islanders among the groups automatically considered eligible for an OTP Target Market. Applicants are permitted to seek OTP recognition for other populations by demonstrating that the group lacks access to capital.

a. Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why? No comment.

b. CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally? No comment.

4. National Target Markets: Currently, in order to be certified with a Target Market national in geographic scope, CDFIs need to show that they have conducted their financing activities broadly across the variously defined regions of the country, (e.g. Northeast, West, Midwest, South, Southeast, etc.)

a. Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments? Existing portfolios and annual activity can demonstrate that a CDFI serves a national Target Market.

b. Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these practices as constituting a national Target Market? Demonstration of activity in multiple regions over several years can be used.

E. Development Services: A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. Development Services means activities undertaken by a CDFI, its Affiliate or contractor 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. For example, such activities include, but are not limited to, financial or credit counseling; homeownership counseling; and business planning and management assistance.

1. Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined? No comment.

2. Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service? No, too restrictive.

3. Should a certified CDFI be required to offer each Development Service each year to maintain certification status? No, too restrictive.

F. Accountability: The CDFI Fund currently requires that a CDFI maintain accountability to its Target Market through representation on its governing board and/or advisory boards. Prior to recent changes in the regulation, a CDFI could demonstrate accountability through other mechanisms such as focus groups, community meeting, and/or customer surveys.

1. What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, i.e. governing vs. advisory boards? Board representation should support the underlying target market of the CDFI. Specific percentages are unrealistic for a national CDFI, however, Board membership should reflect a national focus.

2. Is representation on an advisory board sufficient to demonstrate accountability? No comment.

3. Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how? No comment.

4. Is a business plan and a stratified, statistically significant random sample of lending by asset class and location sufficient to document accountability? Under what circumstances? No comment.

5. Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how? No comment.

6. How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (e.g., small businesses, micro businesses, and affordable housing developers, charter schools), but whose ''end-beneficiaries'' are? No comment.

7. How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? No, too restrictive. In this context, how should the term ''local'' be defined?

8. How should an Applicant that utilizes a web-based lending platform, especially one that serves a national Target Market, demonstrate accountability? No comment.

G. Non-Governmental Entity: By statute, a CDFI Shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. In the CDFI Certification application, the Applicant must respond to a series of questions designed to surface/discover issues or circumstances that may prevent an Applicant from meeting this criteria.

1. Are the current standards for establishing that an Applicant is not owned or controlled by a governmental entity sufficient? No comment.

2. Are there additional or alternative questions and/or documentation the CDFI Fund should require to determine if an Applicant is an agency or instrumentality of a Federal, State or local government? No comment.

II. Certification Policy and Procedures

A. Should the CDFI Fund request information on the reason for applying for certification and intended use (e.g., funding requirement, marketing)? No comment.

B. Are there additional sources of data collected by other federal agencies that can be used to meet any of the seven certification tests? If so, please describe. No comment.

III. General Certification Questions for Public Comment: Through This RFI, the CDFI Fund Invites Comments and Responses to the Following Questions Regarding CDFI Certification

A. ''Community-based'' is a term often used to describe CDFIs. How should ''community-based'' be defined and what does it mean for CDFIs to be ''community-based?'' No comment.

B. Although not defined in statute, the CDFI Fund allows Applicants that serve Native communities to self-designate themselves as Native CDFIs and apply for Financial Assistance and Technical Assistance through the Native CDFI Program. Applicants that self-designate as a Native CDFI must attest to providing 50 percent or more of their products and services to Native lands or Native populations. Should the CDFI Fund continue to allow Applicants to self-designate as Native CDFIs or should there be more defined standards that the CDFI Fund should verify? If so, what should they be? No comment.

C. Should CDFIs be allowed to be composed of multiple legal entities (Subsidiaries and/or Affiliates)? And if so, must a CDFI include all of its Subsidiaries and/or Affiliates for consideration?

D. Should CDFI certification standards have more ''bright-line'' tests, i.e. specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants? Maintain flexibility.

E. In addition to earlier questions regarding potentially different Primary Mission or Target Market standards based on institution type, are there other CDFI certification criteria standards that should vary based on institution type or the type of CDFI? '' No comment.

F. Should ''start-up'' entities be able to be certified? How should the term ''start-up'' be defined? '' No comment.

G. Are there additional areas of CDFI certification policy or the CDFI certification application review process that could use improvement? If so, how? '' No comment.

the community development trust

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March 10, 2017

Mr. David Meyer
Program Manager
Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20020

Re: Request for Information on CDFI Certification

Dear Mr. Meyer:

OFN appreciates the opportunity to comment on the CDFI Fund's Request for Information on CDFI Certification. OFN is a national network of community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other under-resourced communities across America. OFN Members are performance-oriented, responsible investors that finance community businesses, sparking job growth in the areas that need it most, and delivering both sound financial returns and real changes for people and communities.

Our network has originated more than $48 billion in financing in urban, rural, and Native communities through 2015. With cumulative net charge-off rates of less than 1 percent, we have demonstrated our ability to lend prudently and productively in unconventional markets often overlooked by conventional financial institutions.

OFN supports the CDFI Fund's efforts to ensure that certification continues to foster a diversity of CDFI types, activities, and geographies; allows for innovation that supports the growth and reach of CDFIs; and signifies confidence in a strong community development mission. While certification is first and foremost the CDFI Fund's determination of eligibility for its programs, public and private investors have also come to recognize it as a common description of an organization's function and purpose. OFN agrees that it is important that certification remain a mark of confidence in an organization's commitment to a community development mission.

CDFI certification has become highly desirable for many organizations, as state and federal agencies as well as private sector investors include CDFI certification as a requirement for participation in a growing number of programs. As "certified CDFI" status increases opportunity for CDFIs and opens the door to additional investors, ensuring that certified CDFIs maintain that status, and that the CDFI Fund feels that it can reliably verify that status, will become even more critical.

OFN appreciates the opportunity to comment on the following aspects of the CDFI certification criteria:

I. Certification Criteria

A. Legal Entity

Question 1. The statute does not indicate how long an organization must be in existence to be considered a "person (other than an individual)." Should there be a minimum period of time an organization should be in existence before applying for CDFI certification? If so, how long? If not, why not?

No, there should not be a particular time period an organization must be in existence before applying for CDFI certification. There is no statutory requirement related to the this issue, and the CDFI Fund should not impose additional restrictions and allow flexibility for Applicants. OFN agrees with the CDFI Coalition that the maturity, experience and performance of a is CDFI better evaluated and assessed when an organization seeks a Financial or Technical Assistance award.

Question 2. Is there additional documentation, beyond an organization's establishing documents filed with State jurisdictions, that should be accepted to demonstrate that an organization is a legal entity?

The CDFI Fund currently requires evidence of an Applicant's incorporation, organization, or establishment, such as IRS documentation, establishing documents filed with appropriate authorities or charter numbers for Insured Depository Institutions and Credit Unions is sufficient. These documents are sufficient to demonstrate an organization is a legal entity.

B. Primary Mission

Question 1. Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate an Applicant's primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund provide a more explicit, possibly quantitative, definition of what it means to "promote community development" that Applicants would be required to meet? If so, what should be the definition and what test should be applied? Are there criteria that the CDFI Fund should not consider and why?

The statute states that a CDFI must have "a primary mission of promoting community development," but specifies few criteria for meeting that test. The CDFI Fund currently allows Applicants to meet this test by providing:

- Board-approved organizational documents demonstrating the Applicant has a primary mission of promoting community development;

- Narrative statement describing how the Applicant's mission is consistent with the CDFI Fund's; and
- a brief description of Financial Products offered.

While OFN does not believe there needs to be a more quantitative definition of what it means to promote community development, The CDFI Fund should consider additional factors and information when determining if an organization qualifies as meeting the community development mission test. OFN offers suggestions throughout this section for ways the CDFI Fund can assess the mission of Applicants.

Question 2. Should there be different standards for meeting the primary mission test for nonprofit versus for-profit organizations, particularly for-profits that are not Insured Depository Institutions? If so, what different standards should be applied?

Currently, organizations with no mission focus, or are predatory in nature could create subsidiaries or affiliates that can be certified as CDFIs. Without deeper assessment of the Financial Products and Services provided, some payday and predatory lenders could qualify for certification by engaging in financing activities in CDFI-qualifying low income census tracts. As the lending landscape rapidly evolves and more activity takes place online, the CDFI Fund must enhance its ability to assess the financing activity of all entities seeking CDFI certification.

Under the existing CDFI Fund statute and regulations, depository CDFIs are required to meet the certification criteria based on the entirety of their activities, including those of affiliates.[1] OFN recommends this standard be applied to all CDFI types, and require 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.

Question 3. What evidence can the CDFI Fund use to confirm an Applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose actions do not demonstrate intent to create community development and/or are predatory in nature?

The CDFI Coalition’s 2016 paper, “Modernizing the CDFI Certification Process”, details a variety of methods the CDFI Fund could use to evaluate an Applicants adherence to their stated mission including but not limited to:

- Chartering or other formal documents establishing the organization’s community and economic development mission;
- Reports or publications that convey the results or impact of its mission;
- Information on collaborations, partnerships or community engagement activities;

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[1] 12 CFR §1805.201(b)(1); 12 CFR 1805.200(b)

- Affiliates and subsidiaries that demonstrate primary missions of community and/or economic development that complement the work of the CDFI; and
- Information on terms, rates and fees on loan products geared towards low income and other underserved borrowers.[2]

Question 4. To what extent should the CDFI Fund evaluate the Financial Products and/or Financial Services offered by an Applicant to determine its ability to meet the primary mission test? What test would the CDFI Fund apply in any such evaluation of Financial Products and/or Financial Services?

OFN urges the CDFI Fund not to be overly prescriptive in evaluating the Financial Products and Services offered by applicants, allowing CDFIs maximum flexibility to develop the resources needed to meet the needs of their Target Markets. However, OFN recognizes the need to provide safeguards against unscrupulous lenders seeking CDFI certification. To that end, we urge the CDFI Fund to develop methods to assess whether predatory-like products are being offered from lenders, or whether such products provided are having a negative community development impact.

In recent comments to the Office of the Comptroller of the Currency (OCC), OFN identified ways that the OCC could evaluate fintech companies' financial inclusion practices as a condition of receiving a special purpose national bank charter.[3] The CDFI Fund could apply some of that same criteria to lenders seeking CDFI certification.

Question 5. Currently, by statute, Depository Institution Holding Companies wishing to be certified as CDFIs must provide documentation that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test. Should the CDFI Fund also make this a requirement for Non-Regulated CDFIs, for example, a Non-Regulated for-profit financial institution? Why or why not?

Yes. Please see response under Question 2.

C. Financing Entity

Question 1. The CDFI Fund does not currently define the term "predominance," but in practice accepts a plurality of assets as meeting this criterion. Should the term "predominance" be defined more specifically, and if so, how?

Yes, Members of our network suggested the CDFI Fund should numerically define the term "predominance of assets". In addition, the current calculation of the "Predominance of assets" tests reflect a CDFI's financial position only at fiscal year-end. The CDFI Fund could

[2] CDFI Coalition, "Framework for Modernizing the CDFI Certification Process" May 6, 2016.
[3] Opportunity Finance Network, "Comments to the OCC on Special Purpose National Bank Charters to Financial Technology Companies", submitted January 15, 2017.
http://ofn.org/sites/default/files/resources/PDFs/Policy%20Docs/2017/Final%20Letter%20OCC%20Special%20Purpose%20Bank%20Charters%201%2015%2017.pdf.

consider using a yearly average instead of a moment in time that may not accurately reflect the organization's activities throughout the year. The CDFI Fund should also continue to maintain flexibility for CDFIs, and allow Applicants to provide a narrative if they do not meet the "predominance of assets" test.

Question 3. Currently, the amount of assets and staff time dedicated to financing activities are used to measure the level of a CDFI's financing activity. How else could a CDFI's level of financing activity be measured?

The current method using staff time and assets dedicated to financing activities is an acceptable way to measure an Applicant's level of financing activity.

Question 4. For Non-Regulated CDFIs, is the current "predominance of assets" test appropriate, or should alternatives or additional considerations be permitted?

The current "predominance of assets" test is appropriate for Non-Regulated CDFIs. As mentioned in Question 1 of this section, Applicants should be able to provide a narrative explanation to the CDFI Fund if they do not meet the "predominance of assets" test.

Question 5. Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI's financing activities?

Yes, Non-Regulated CDFIs should be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI's financing activities. The activities of affiliates and subsidiaries should be considered throughout the CDFI certification application, from meeting the primary mission test, to financing, to the provision of Development Services.

Question 6. Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities?

Yes. In general, OFN feels that Applicants for certification should meet all the certification criteria at the time of application. However, if a parent CDFI seeks to create a new CDFI affiliate with a limited track record, the Applicant should, for a period determined by the Fund, be able to rely on the financing activity of a parent CDFI to meet this qualification with a few caveats. The CDFI Fund should impose a deadline by which the Affiliate must meet the financing entity requirement based on its own merit or activity, and require the parent CDFI maintain its CDFI certification until the Affiliate is able to meet all CDFI certification requirements.

Question 9. Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status?

Yes, unless there is a good reason. The CDFI Fund should allow CDFIs to explain why they have not made any loans or investments in that year to provide an explanation, but in general CDFIs should be providing financing every year to maintain certification.

D. Serves an Investment Area or Targeted Population

Question 1. Threshold Target Market Test

Part a. Is the current standard that 60 percent of a CDFI's Financial Product activities must be in qualified Target Markets the right standard? If not, what percentage of transactions should be in and/or to a qualified Target Market to demonstrate that an organization serves that Target Market and why?

OFN believes the 60 percent of dollar amount and transaction volume is an acceptable standard as a benchmark, but with some flexibility for CDFIs that may not quite meet the requirement. However, CDFIs in our network felt the requirement that both the number and dollar amount of the organization's Financial Product activities be at least 60 percent of all its Financial Product activities in the most recent fiscal year is challenging and limits flexibility. OFN recommends the CDFI Fund consider allowing a CDFI to demonstrate that 60 percent of *either* the dollar amount or total number of loans be directed to the Target Market is an acceptable way to meet the test.

This is especially useful for CDFIs that provide both microloans and small business loans. A CDFI that primarily makes microloans in the Target Market might make one larger business loan outside of the approved Target Market that could skew the entire portfolio and make a CDFI look noncompliant even if nearly all the other lending activity is in the Target Market. Allowing the "either/or" approach would allow CDFIs additional flexibility and the chance to more fully represent its lending activity.

Additionally, as the CDFI Coalition points out, the 60 percent test is applied only to those activities in approved Target Markets. A CDFI certified to serve a Low Income Targeted Population (LITP) nationwide cannot include, for purposes of meeting the 60 percent test, loans made to borrowers in qualified CDFI census tracts or to certain populations that are not also low-income. CDFIs must separate out lending activity to determine what can be reported on as financing activity in the Target Market, creating burdensome reporting requirements. This may also result in CDFIs that are lending in CDFI-designated Target Markets being deemed noncompliant with the threshold test.

Another issue of major concern for CDFIs in our network is the lack of clarity around meeting the threshold test when there is a pending request to modify the Applicant's Target Market. CDFIs need certainty around any reporting requirements that could impact certification, but delays in receiving approvals from the CDFI Fund make it difficult to plan and develop lending pipelines. OFN agrees with the CDFI Coalition's recommendation that CDFIs that have submitted modifications to their Target Markets to the CDFI Fund should be able to include any activity in that modified market, even if the CDFI has not yet been approved for those specific markets.

Additionally, CDFIs expressed concern about significant wait times when seeking approval from the CDFI Fund to adjust their Target Market. The CDFI Fund should make the approval process for adjusting a target market as simple as possible, and consider moving to an automated system that allows for Target Market adjustments online.

Part b. Should there be different thresholds for different institution types (i.e., Insured Depository Institutions and Credit Unions, nonprofit loan funds, and venture capital funds)?

No, the threshold should remain consistent across different institution types.

Part c. The CDFI Fund currently relies on self-reported summary data submitted by Applicants to demonstrate that they meet the Target Market threshold test. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?

Yes, the CDFI Fund should require a statistical sampling of transactions from Applicants, and conduct a random sampling to test a percentage of all CDFIs on an annual basis. However, OFN urges the CDFI Fund to maintain flexibility in this requirement and allow CDFIs to provide an explanation of any changes or unusual activity in their portfolio.

Part d. The August 31, 2015 Interim CDFI Program Regulations added the provision of Financial Services as a means of demonstrating that an applicant serves a Target Market. However, the CDFI Fund does not currently have a method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured? If an Applicant requests credit for providing Financial Services, should there be a separate minimum level of Financial Products that must be provided by the Applicant?

OFN recommends Financial Services count toward the Threshold Test. The current Threshold test only includes lending, and CDFIs in our network pointed out that although borrowers may not be qualified or ready to borrow yet, the provision of Financial Services geared toward low income people like credit builder checking accounts should still count towards meeting the 60 percent requirement, as it shows the prospective CDFI is serving a low- income market.

CDFIs in our network also indicated that Development Services should specifically be included in the 60 percent threshold so Applicants that direct 60 percent of their Financial Products, Financial Services, and Development Services to their Target Market be deemed to meet the Threshold Test.

Part e. The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this *the appropriate time period to consider, or should a longer period of time be considered? If so, should the applicant be required to meet the threshold in each year of the test, for a time period, or should an average be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?*

The CDFI Fund should consider a longer period that the most recent fiscal year when determining if an Applicant meets the threshold test. OFN recommends the CDFI Fund consider a three-year average for certification Applicants.

Question 2. Investment Areas

Part b. Currently the CDFI Fund allows Investment Areas to be composed of a set of contiguous geographic units that may include a small portion of units that individually do not qualify as Investment Areas. Should the CDFI Fund continue this practice, or should all units within the Investment Area meet the Investment Area qualifications?

The CDFI Fund should continue to allow a small portion of units that individually do not qualify as Investment Areas. The contiguous census tract requirement ignores the reality community and neighborhood structure, and prohibits capital from flowing to where it is needed most. In some instances, there may be a number of distressed communities where CDFIs could potentially invest but cannot because it is not part of a contiguous census tract of their designated Investment Area. One CDFI noted that to meet the Fund's criteria, they essentially gerrymander an Investment Area to fit into the CDFI Fund's model instead of focusing on the neighborhoods in a service area that are underserved but may not be in a contiguous census tract.

OFN agrees with the CDFI Coalition that the CDFI Fund should waive the contiguous census tract requirement rule in its regulations to solve this problem until the regulations can be amended. The New Markets Tax Credit program's CDE service area requirements can serve as an improved model for CDFIs to serve Investment Areas.

For CDFIs serving regional and national Target Markets, the definition of Investment Areas makes it difficult for CDFIs to become certified to serve multiple states, restricting the ability of CDFIs to deploy capital where it is needed most. As CDFIs grow and expand their geographic coverage, placing limitations on Investment Areas will impede the ability of national and regional CDFIs to reach their full potential, leaving communities underserved. CDFIs in our network also suggested Applicants should also be able to designate all rural areas in a state as an Investment area.

Members also noted the requirement that a CDFI serve an Investment Area before it can be certified to serve that Target Market is also confusing and counterintuitive to the CDFI Fund's 60 percent threshold criterion, as it makes it more difficult for Applicants to reach that threshold if the activities in the new Investment Area are not counted. As we mentioned in a previous question, CDFIs should be able to count activities in Target Markets for which they have not yet been certified towards meeting the 60 percent Threshold Test.

Finally, as online lending becomes a more prevalent part of the financial services market, CDFI Investment Areas are less connected to a geographic location and more CDFIs are focusing on a borrower type rather than a geography. OFN urges the CDFI Fund to adopt policies that enhance flexibility for CDFIs when assessing current and potential target markets to ensure CDFIs can innovate and expand.

3. Targeted Populations

Part a. Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations (OTP) that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?

The CDFI Fund currently includes, for a specific geographic unit(s), African-Americans, Hispanics, Native Americans, Native Alaskans, Native Hawaiians, and Other Pacific Islanders among the groups automatically considered eligible for an OTP Target Market. Applicants are permitted to seek OTP recognition for other populations by demonstrating that the group lacks access to capital. Suggestions for Other Targeted Populations include Asian Americans, Veterans, and rural communities.

OFN also agrees with the CDFI Coalition that other federal programs that share community development goals similar to the CDFI Fund should be allowed to be considered Targeted Populations. The CDFI Fund should also clarify if CDFIs be considered as serving a Low Income Targeted Populations (LITPs) by providing LITP jobs, as allowable under the Community Development Block Grant Program.

Part b. CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?

CDFIs in our network recommend that applicants proposing to serve Targeted Populations be approved to serve such target markets nationally.

4. National Target Markets

Part a. Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments?

CDFIs in our network felt there should not be a minimum number of states nor a minimum geographic dispersion of actual investments required to demonstrate serving a national Target Market. The CDFI Fund should not be overly restrictive when certifying Target Markets and instead encourage CDFIs to determine where their capital can flow to meet the needs of underserved communities.

Further, CDFIs pipelines are malleable and change based on market conditions; CDFIs may need to make adjustment to their business plans or investment strategies throughout the year. Adhering to a certain dispersion or commitment to dispersing capital in a certain area will limit flexibility and result in confusing and onerous reporting and compliance requirements.

The CDFI Fund could instead focus on other factors to determine certification of target markets such as an applicant's active clients, loan volume, and how the loan portfolio that is disbursed to the proposed target population to determine if the Applicant is serving a National Target market.

Part b. Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these practices as constituting a national Target Market?

OFN recommends that if an organization is serving an approved Low Income Targeted Population, they should be recognized as serving a national target market as suggested in Question 3b. This will give CDFIs room to expand without needing to submit a new request to expand their Target Market each time. Additionally, organizations serving multiple states that are certified in one target market should also be certified for those same target markets in other states they serve.

E. Development Services

Question 1. Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?

No, the CDFI Fund should not more explicitly define Development Services and instead support broad definitions including development services that are tied to community development goals even if they do not necessarily lead to on-balance sheet lending.

OFN also agrees with the CDFI Coalition' recommendation that applicants offering financial counseling services, regardless of whether they are linked to a specific loan product, should be considered as offering Development Services.

Question 2. Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service?

No, Applicants should not be required to provide a corresponding development service for each Financial Product and Financial Service. Further, not all CDFI clients will want or have a need for a Development Service. Allowing CDFIs to assess for themselves the best Development Services to deliver to their borrowers and respond to a client's needs by providing different development services will ensure CDFIs have the flexibility to provide the products and services that meet their needs of their communities.

Question 3. Should a certified CDFI be required to offer each Development Service each year to maintain certification status?

No, CDFIs should not be required to offer each development service each year to maintain certification status. The CDFI Fund should provide latitude to the Applicants to determine which products and services are offered to their clients each year.

F. Accountability

Question 1. What percentage of a CDFI's board members should satisfy accountability rules?

CDFIs in our network expressed concern about the challenges of using board membership as the sole method to maintain accountability to a Target Market. OFN recommends the CDFI Fund adopt the approach it uses to certify Community Development Entities (CDEs) in the New Markets Tax Credit program, in which 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.[4]

Question 3. Is representation on an advisory board sufficient to demonstrate accountability?

Representation on an advisory board could be sufficient to demonstrate accountability, especially for CDFIs serving Target Markets that are limited in scope. However, some CDFIs in our network, especially those serving large, complex Target Markets, find the requirement to have "one to one" board or committee representation to a Target Market overly burdensome. Further, CDFIs question whether strong Board Level Accountability correlates with strong Target Market service delivery, and if Board composition is an effective way to measure it.

In addition, the accountability mechanism may inadvertently restrict the ability of CDFIs to attract the most qualified Board members. As CDFI operations become more complex, organizations need the ability to create boards that can support the strategic needs of the organization. That does not exclude "accountable" board members, but it should not be the defining characteristic when CDFIs are seeking Board Members. The accountability mechanism needs to balance the needs of ensuring local accountability and engagement in the decision-making process with the ability of CDFIs to attract Board Members with a set of skills and experience that align with service the needs of the Target Market.

Question 4. Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?

CDFIs should be able to demonstrate accountability through means other than board membership. The CDFI Fund should allow Applicants to supplement board representation by demonstrating accountability through other mechanisms such as focus groups, community

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[4] US Department of the Treasury, "Guidance for Certification of Community Development Entities", New Markets Tax Credit Program, Part VI, December 20, 2001.

meeting, and/or customer surveys, enhancing flexibility. CDFIs in our network suggested the CDFI Fund consider successful deployment of capital in the Target Market as evidence of accountability. For example, if loans and/or amount lent to Target Market meets the Threshold Test, this could be deemed to meet the accountability test.

Question 6. Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how?

No, the CDFI Fund should not have different accountability requirements based on CDFI type.

Question 7. How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (e.g., small businesses, micro businesses, and affordable housing developers, charter schools), but whose "end-beneficiaries" are?

OFN agrees with the CDFI Coalition that for compliance purposes, the CDFI Fund needs to develop guidelines for the types and levels of end beneficiaries that fulfill the accountability requirements. There needs to be clear guidance so CDFIs know what to document and report to remain certification-compliant if serving a Target Market through the end beneficiaries' path.

Question 8. How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? In this context, how should the term "local" be defined?

CDFIs in our network serving a multistate or national Target Market found it particularly challenging to meet the accountability requirements. One organization that has grown to serve five states with four Target Markets across multiple states noted that the Board representation accountability mechanism is unwieldy for their organization. CDFIs with national Target Markets should not have to demonstrate requirement for local accountability, and instead should be evaluated under the NMTC accountability requirements for Community Development Entities, in which a CDE with a statewide, multi-state, or national service area must demonstrate that at least 20 percent of the advisory board is representative of a cross-section of the low-income community within the state(s) that it serves.

G. Non-Governmental Entity

Question 1. Are the current standards for establishing that an Applicant is not owned or controlled by a governmental entity sufficient?

OFN agrees with the CDFI Coalition that for CDFIs with a connection to a local, county or statewide agency, the CDFI Fund should ask additional questions about the relationship with governmental entities concerning whether the potential CDFI works closely with city, county or state agencies, whether the CDFI manages any of their loan funds, and whether any government official can veto the CDFI's loan decisions. The Applicant could also be asked to provide a narrative statement describing relationships with city, county or state agencies and the extent to which the applicant coordinates its lending activities with such agencies.

II. Certification Policy and Procedures

A. Should the CDFI Fund request information on the reason for applying for certification and intended use (e.g., funding requirement, marketing)?

No, CDFIs in our network did not feel it was necessary to request information on the reason an Applicant seeking certification, and that it would just add unnecessary paperwork to the process.

III. General Certification Questions for Public Comment

Part D. Should CDFI certification standards have more "bright-line" tests, i.e. specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?

OFN encourages the CDFI Fund to continue to remain flexible in all its programs. The strength of the CDFI industry lies within its diversity and the ability of organizations to develop customized solutions based on the needs of the communities in which they work and operate every day. Diversity of markets, organization types, sectors served, and geographic needs means imposing strict requirements and thresholds will restrict the ability of CDFIs to deploy capital where it is needed most.

While a bright line test or threshold might make it easier to evaluate if an Applicant meets a certain criterion, the opportunity finance industry still needs the CDFI Fund to retain its ability to accurately assess the strategy and activities of certification Applicants. The CDFI Fund serves as a barrier between CDFIs that are deeply rooted in communities and providing capital to those left out of the mainstream, and those entities seeking certification to bypass regulation or received favorable status from other agencies. OFN urges the CDFI Fund balance the need to streamline processes with the needs to maintain the integrity of the "CDFI certification" brand.

Part F. Should "start-up" entities be able to be certified? How should the term "start-up" be defined?

Yes, as long as they can meet all the certification criteria.

Part G. Are there additional areas of CDFI certification policy or the CDFI certification application review process that could use improvement? If so, how?

OFN urges the CDFI Fund to find ways to streamline the certification process. CDFIs remain concerned about the uncertainty created when recertification applications are left pending for extended periods of time, some stretching more than a year. Incomplete information about certification status can impact deployment and investment decisions, and potentially jeopardize covenants with other funders who require certification to be maintained as a condition of funding. CDFIs needs quick turnaround on certification decisions from the CDFI Fund to appropriately plan for future business decisions.

Conclusion

CDFI certification is one of the most critical components of the CDFI Fund's mission. OFN appreciates the opportunity to offer suggestions to improve the process. We appreciate your consideration of these comments and look forward to the continued success of the CDFI Fund programs. Please do not hesitate to contact me if you have questions or concerns about these recommendations via email or phone at dwilliams@ofn.org; 215.320.4318.

Thank you,

Dafina Williams

Dafina Williams

Vice President, Public Policy

cc: Liz Lopez, Executive Vice President, Public Policy

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March 10, 2017

David Meyer
Certification, Compliance Monitoring and Evaluation Manager
CDFI Fund
1500 Pennsylvania Ave., NW
Washington, DC 20220

Dear Mr. Meyer:

Thank you for the opportunity to provide comments to the CDFI Fund on the current policies and procedures to certify an organization as a CDFI. SSTI strengthens initiatives to create a better future through science, technology, innovation and entrepreneurship, and the organizations we work with focus on using these tools to solve real problems and improve economic prosperity. We are pleased to provide input on how the CDFI Fund might adapt its certification process to work with more equity providers, facilitating an alternative source of capital for target populations throughout the country.

Our primary concern with the CDFI certification process is the lack of equity financing that is currently available to target populations. The participation of venture capital[1] funds through the program has always been limited. The CDFI Fund's report in June 2016[2] found that just 14, or about 1 percent, of all certified institutions are venture capital funds, representing $209 million in available funding—about 0.2 percent of all CDFI assets.

The lack of equity financing available through CDFIs is concerning for four reasons:

> First, as the CDFI Fund is well aware, many new businesses, particularly in low-to-moderate income areas, struggle to access traditional debt financing. Equity is an attractive alternative to debt for many startups, particularly those with low current cash flow or a longer route to robust sales than a traditional lender could be able to support without charging onerous interest rates or demanding excessive collateral.
>
> Second, after trailing off following the dot-com bubble of the late 1990s, venture capital is again growing as a source of business financing, both in the U.S. and across the world.[3] To the extent

[1] In order to align with the CDFI Fund's terminology, our comments will primarily use the term "venture capital" when talking about equity financing through CDFIs. However, we would like to note that seed investments may be more appropriate in many cases, and equity-focused CDFIs may also want to pursue angel investment structures, depending on the needs of the target population.
[2] CDFI Fund. (2016, June). *Snap Stat: Sizing Up Certified CDFIs*. Available at: https://www.cdfifund.gov/Documents/Snap%20Stat%20June%201,%202016.pdf.
[3] EY. (2016). *Back to Reality: EY Global Venture Capital Trends 2015*. Available at: http://www.ey.com/Publication/vwLUAssets/ey-global-venture-capital-trends-2015/$FILE/ey-global-venture-capital-trends-2015.pdf.

that CDFIs wish to provide financing options that reflect those available in private markets, equity should be a greater portion of the total available assets.

Third, America is still producing fewer new companies than at any point prior to the Great Recession.[4] This is particularly concerning because startups create the majority of net new jobs in the country. According to an analysis by the Economic Innovation Group, America's failure to return to 2006 levels of startup creation has cost the country 924,000 new jobs.[5] To the extent that access to alternative financing structures is part of the solution for this problem, CDFIs should play a role providing the solution.

Fourth, and perhaps most in alignment with the purposes of CDFIs, the recent resurgence of venture capital is not being applied equitably across geography or demography by the private markets. According to a new report published by the Martin Prosperity Institute, the top four metros account for more than 59 percent of all venture capital investment in America.[6] Similarly, a study of the 2014 Census Survey of Entrepreneurs recently found that less than 10 percent of venture capital in that year was investment in black- and Hispanic-owned businesses and just 13 percent to female-owned businesses.[7] The target population focus of CDFIs is explicitly designed to address this sort of disparity. However, while more than $107 billion is available from CDFIs to help level the playing field for access to debt financing, CDFIs are essentially not providing any resources to alleviate similar pressures on businesses seeking equity investments.

Greater inclusion of community-minded equity funds could help the CDFI Fund address each of these reasons for concern with the program's relative lack of support for investment capital. These types of funds do exist and are demonstrably able to assist target populations. Launch NY, a recently-certified CDFI in upstate New York, has provided seven investments (out of a total of ten) to startups in low-to-moderate income areas in the last year. Oklahoma's successful i2E is working to prepare Native American and other rural businesses for seed investments. Innovation Works, a Pittsburgh-based certified CDFI, has provided investment support to 312 companies, leveraging $1.7 billion in follow-on funding since 1999.

Many other funds actively make investments related to expanding capital access to underserved markets and may be interested in CDFI status if the program were more prominent or expanded for equity investors. Village Capital is an investment fund targeting socially-positive companies in non-traditional markets; they have made 55 investments to different companies that have reached more than 10,000 smallholder farmers, affected nearly 300,000 low-income patients and offset more than 50 billion pounds of carbon dioxide emissions. Public-private partnership programs supported by the U.S. Department of Treasury's State Small Business Credit Initiative largely invested the program's venture capital dollars in

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[4] Harrison, J.D. (2015, Feb. 15). "The decline of American entrepreneurship – in five charts." *Washington Post*. Available at: https://www.washingtonpost.com/news/on-small-business/wp/2015/02/12/the-decline-of-american-entrepreneurship-in-five-charts/.
[5] Economic Innovation Group. (2017, Feb.). *Dynamism in Retreat: Consequences for Regions, Markets and Workers*. Available at: http://eig.org/wp-content/uploads/2017/02/Dynamism-in-Retreat.pdf.
[6] Florida, R. & King, K.M. (2017). *Spiky Venture Capital: The Geography of Venture Capital Investment by Metro and Zip Code*. Martin Prosperity Institute. Available at: http://martinprosperity.org/media/Startup-US-2016_Spiky-Venture-Capital_Revised.pdf.
[7] Liner, E. & Bhandari, R. (2017, Feb. 16). "America's got talent – Venture capital needs to find it." *Third Way*. Available at: http://www.thirdway.org/report/americas-got-talent-venture-capital-needs-to-find-it.

markets with the lowest per-capita rates of private venture capital investment;[8] for example, Alaska and West Virginia used the opportunity provided by the program to facilitate equity capital access for startups in their states. Across the country, dozens of venture development organizations investment in companies that are underserved by the private equity investment market, and many of these companies would be eligible for CDFI activity on the basis of the business's location in a distressed census tract or due to a qualifying status of the business owners.

With the presence of clear mission-relevancy for both the CDFI Fund and venture development organizations, the question that must be answered is: why are so few equity investors participating seeking, or achieving, CDFI certification?

To a certain degree, the problem is one of knowledge. We recommend that the CDFI Fund be more active in making investment funds aware of the CDFI opportunity. Because such few funds participate in the program, there is a wide perception among these organizations that the program is a poor fit for investment capital. Deliberate outreach is an important means to achieve greater participation. Beyond simple awareness of the program, the relative lack of certified venture funds yields a lack of public information about hurdles specific to this section of the market. Credit unions, loan funds and other debt providers interested in achieving CDFI certification can receive information and other support from a wide range of governmental, corporate and non-profit entities. Few, if any, comparative resources exist for venture funds. To be certain, this lack of support is not the sole burden of the CDFI Fund, but until a greater range of venture funds have become certified, collaborations between the CDFI Fund and other organizations seems to be the best way to generate the initial knowledge venture capital funds need to apply successfully for the program.

Indeed, the lack of experience with the CDFI certification process for venture capital funds is such that we have struggled to define the exact barriers beyond knowledge. However, our conversations with current and prospective CDFIs have pointed to structural challenges as likely barriers.

The first type of structural challenge relates to the stated mission and board makeup of many venture development organizations. We recommend that the CDFI Fund not increase or substantially alter the current standards of accountability as they relate to advisory boards. Venture development organizations are often established and supported by communities to serve markets that are vastly underserved by investment capital—but not necessarily by debt capital. As such, the mission and board members of venture development organizations may not reflect the same community development focus expected by the CDFI Fund, but this does not mean that the funds are at cross-purposes with the certification program. Indeed, many of the funds are making a significant portion, if not super majority, of their investments and technical assistance to qualifying entrepreneurs. The venture development organizations need to understand, well in advance of applying for status, how the CDFI Fund's definition of community development and underserved markets differs from the definitions that may be being applied by the venture development organization. In many cases, the venture capital funds will need a board of experienced investors to help with decision-making, and changes to the certification rules should not disrupt this process. These organizations can meet the current standards but may need more information

[8] Center for Regional Economic Competitiveness & Cromwell Schmisseur. (2016, Oct.). *Program Evaluation of the U.S. Department of Treasury State Small Business Credit Initiative*. U.S. Department of Treasury. Available at: https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Program%20Evaluation%202016%20-%20Full%20Report.pdf.

about how to do so. A change in the standards would place another barrier to venture capital participation in the program.

Another structural challenge for venture capital funds may be the CDFI Fund's rules related to the ownership and structure of subsidiaries and affiliates. Most investment funds are structured as separate limited liability corporations from the organization or individual raising the fund. This is a reasonable and recommended practice. The CDFI Fund should be certain that certification rules for venture capital funds do not penalize the funds for utilizing this structure. Additionally, the CDFI Fund may consider further flexibility within this rule for venture capital applicants. Many venture development organizations structure different funds for specific purposes. For example, a single organization may operate a general purpose fund, a biotech fund and a fund for female entrepreneurs. This is particularly common when partnering with other investors, who may have specific expertise or may be seeking specific types of impacts. In order to maximize the number of funds able to become certified, the CDFI Fund could consider allowing venture capital CDFIs to specify which of its subsidiaries or affiliates apply to the determination of CDFI eligibility. The organization would not be able to move entirely outside the scope of the CDFI Fund's mission, due to the requirements for adequate community development investment history and accountability of relevant funds. At the same time, the organization would not be made ineligible by its operation of a general investment fund (which in most cases would be targeting underserved markets for an economic development purpose) that is effectively catalyzing the fundraising for the CDFI-eligible investments.

Finally, we recommend that the CDFI Fund consider accepting a lower Threshold Target Market Test for venture capital applicants. This could be accomplished in practice through the CDFI Fund's stated willingness to accept explanations for reaching a lower threshold, or through a lowering of the standard from 60 percent to 50 percent. This should be a temporary change targeted to making more community-minded venture capital funds eligible for the program. Once more funds have been certified and can demonstrate to other organizations the value and means of acquiring certification, there may be no reason to continue with a lower test. In the meantime, a lower threshold would help account for the fact that many of the funds potentially interested in CDFI status were established to deal with the general geographic disparities of investment capital—a purpose that is in alignment with the CDFI Fund's intentions, although outside its main mission. By applying a waiver-based approach to lowering the threshold, the CDFI Fund could apply this standard to development-driven entities but still hold profit-driven entities to the higher standard.

We are greatly encouraged by the CDFI Fund's interest in assessing the certification process and thank you again for your consideration of our feedback. We would be happy to provide additional information and stand ready to serve as a partner for the CDFI Fund in working with venture development organizations and other equity funds.

Sincerely,

Dan Berglund
President and CEO
SSTI

HOUSING OPTIONS
& PLANNING
ENTERPRISES, INC.
H.O.P.E.

Via Email - cdfihelp@cdfi.treas.gov
Mr. David Meyer
CCME Manager
CDFI Fund
1500 Pennsylvania Avenue, NW
Washington, DC 20220

March 10, 2017

Re: Comments pursuant to Notice and Request for Information
(Fed . Reg. Vol. 82 No. 5, January 9, 2017)

Dear Mr. Meyer,

We're grateful for the opportunity to comment on the process and criteria for re-certification of CDFIs. Housing Options & Planning Enterprise, Inc. (H.O.P.E.) was certified as a CDFI 2016 and is now increasing our capital supply to expand product offerings to meet the needs of our Target market and population. Our comments are specific to our expansion plans and recertification.

Comments

I. Financing Entity

Predominance and plurality of assets- In this instance predominance should refer to the capital or resources available for financing activities. The predominance test should exclude obvious non-financing passive assets such as, FFE, securities and capital reserves for operations.

Expanding eligible products and activities- Market place needs and products have changed and we urge the Fund to consider declaring eligible the following activities desperately needed in markets like ours ravaged by foreclosure and wealth loss disproportionally effecting certain Targeted Populations -

- Eligible TM loans purchased from non CDFIs- We understand that CDFI intermediaries are unwilling to purchase non qualifying and non-conforming mortgage loans made available to our clientele ***because those loans aren't originated by a Certified CDFI***. We urge you to declare such loan purchase as "eligible financing " and remove this apparently obsolete qualifier.

- Residential properties held for rent should be counted as an eligible financing activity- Renting is a form of financing and represents the primary option available to Target Markets and Populations ravaged by foreclosure. If a CDFI actively rents properties held in portfolio and the lessee or property is in a Target Market or Investment Area the activity should count as eligible financing.

Actively engaged- Certified entities should be required to demonstrate market activity in order to be recertified. However, activities other than disbursement of capital should count as long as adequately and clearly explained. For example, a CDFI whose capital is fully deployed may be unable to finance in a given fiscal cycle despite ongoing capitalization efforts. In this instance underwriting and outreach as well as loan extensions should be counted as financing activities. Accordingly, those seeking certification should be favorable considered upon demonstrating capacity to deploy capital even if minimal.

II. Target Market

Threshold target market test- Instead of a fixed minimum of 60% we strongly urge the fund to utilize a base line of 40% with exceptions granted for as low as 35% with good explanation for initial and recertification. Benchmarks are fluid consistent with the true nature of the CDFI business. A fixed minimum is like a covenant without the opportunity to cure and therefore resulting in draconian consequences. 40% represents a significant portion of the business and recognizes the need for diversified investments in order to sustain mission activities.

Investment Areas - The Current practice of recognizing investment areas that include non-qualified census tracts is appropriate because it simplifies the process without compromising mission.

Targeted Populations- Other targeted populations should be expanded to include groups with common characteristics of distress regardless of location (i.e. ***any and all*** persons at or below 80% AMI regardless of location.)

Regards,

Donna Hurley
President/Executive Director

Clearinghouse CDFI

Community Development Financial Institution

March 10, 2017

Mr. David Meyer
Certification, Compliance Monitoring and Evaluation (CCME) Manager
Department of the Treasury, Community Development Financial Institutions Fund
1500 Pennsylvania Ave NW
Washington, DC 20220
cdfihelp@cdfi.treas.gov

Dear Mr. Meyer,

We are writing in response to the Notice and Request for Information published in the Federal Register, Vol. 82, No. 5, dated January 9, 2017 ("RFI"), attached as Exhibit B. The CDFI Fund is a trusted partner in community development, and we thank you for the opportunity to respond.

We at Clearinghouse CDFI have enjoyed CDFI certification for more than 20 years, and feel it has been integral to our track record of success. As such, we feel quite strongly about many of the issues raised by the RFI on the CDFI certification criteria and process. We have review the RFI and attached our response as Exhibit A.

Please feel free to contact us at any time for any clarification or further discussion of the RFI or our response to it. We appreciate your time.

Sincerely,

Douglas J. Bystry
President/Chief Executive Officer
Clearinghouse CDFI

I. Certification Criteria

A. *Legal Entity*

Clearinghouse CDFI ("Clearinghouse", or "we") believes the legal entity test to be a technical requirement, and should not have further obligations beyond legal existence. The stronger tests for a CDFI should be its primary mission, service to Target Market, development services, and community representation. It is not appropriate to add additional qualifications, such as minimum time periods, beyond the requirement to exist as a legal entity. This can be demonstrated by establishing documents within State jurisdictions.

B. *Primary Mission*

Clearinghouse strongly feels that there should not be different standards for meeting the primary mission test for nonprofit versus for-profits, nor should there be different standards for Insured Depository Institutions versus other types of CDFI. The capital structure of an entity, for-profit or nonprofit, is irrelevant to their primary mission and to their activities promoting community development. Capital raising is the means by which we reach the goal of community development. Our for-profit status has been a benefit in attracting capital for community development from banks. Our corporate structure provides our for-profit investors a degree of comfort and familiarity, which helps unlock this capital and allows us to grow our assets that we can deploy in community development.

A CDFI's primary mission should be evaluated based on the actual performance of the CDFI, the composition of its governance structure, and other factors relevant to its impact within the community in its chosen Target Market. There should not be a difference in assessing the primary mission which preferences one form of CDFI. This would limit the creativity of CDFIs, and inhibit the ability to proportionally respond to changes, unmet credit needs and developing opportunities in the economic environments of our chosen Target Markets.

Clearinghouse also feels that evaluations of the primary mission test should be global in nature, and that CDFIs of any kind or size should demonstrate accountability to their stated primary mission by including all entities in a controlled group for the purposes of the primary mission test. This would help prevent the possibility that a controlled group could form a subsidiary to be certified as a CDFI, while the group as a whole would not comply with the spirit of the primary mission test. Such an entity should be prevented from profiting from CDFI designation if their group, in whole, does not have the primary mission of community development.

We feel that governing documentation alone is not sufficient to prove that a CDFI has a primary mission of promoting community development. The evaluation should start with the composition of the board of directors and other governing bodies, including advisory boards. A CDFI should also be able to demonstrate, through its track record, that it is actually promoting community development through its activities and deployment of its assets. The track record of the CDFI, as shown through the Annual CIIS Report and other means, should provide a more substantive record of promoting community development.

The CDFI Fund should enforce consistent, broadly applied standards regarding the qualification that a CDFI have a primary mission of community development. CDFIs are best placed to evaluate the developmental needs of their community, and craft their mission in accordance with those needs. As such, it would be counterproductive to the CDFI Fund's goals of community development to stringently narrow the possible range of community development. In assessing a CDFI's primary mission, we favor a global, facts and circumstances approach that will enable innovative CDFIs to flexibly succeed and to best serve their communities.

C. *Financing Entity*

We believe the CDFI Fund should evaluate a CDFI based on the organization's activity and assets, using a "facts and circumstances" method, but that minimum standards should be applied, equally to the full population of CDFIs. CDFIs have a history of innovative and creative financing activity to serve their communities, and adding undue technical requirements would shift CDFIs to use that creativity to fulfill those technical requirements, rather than for community development. There should be minimum standards that can ensure that institutions follow the spirit of the CDFI Fund and of community development, but these should ultimately serve the CDFI population and their missions, and not restrict bona fide CDFI activity.

We believe that a CDFI should be active as a financing institution, in which "activity" means the employment of its assets in community development, and the term "predominance" should mean that a plurality of those assets is dedicated to financial products. These assets should be evaluated on a global level, including all members of a controlled group, to prevent financial engineering design to create technical compliance while not serving the spirit of community development.

Allowing less than a plurality would mean that a CDFI would be allowed to have a different predominant activity, and should be in the purview of a different industry and regulatory scheme. Such entities which are not truly CDFIs would be able to use a looser definition of the term "predominance" to choose their regulators, and would allow technical compliance with CDFI rules while violating it in spirit. We are also skeptical that an entity could have community development as a primary mission while employing a minority of assets to that end.

CDFIs should be evaluated on a global level that combined all members of a controlled group, so that an organization would not be able to segregate its activities into various entities in order to technically comply with the CDFI certifying requirements. An entity should not be allowed to segregate its community development activity from other activities, or vice versa, for the purposes of benefitting from CDFI programs, or avoiding CDFI requirements. Global evaluation would also reduce the need to assess questionable, non-arm's length transactions, because related parties would be combined in their evaluation.

A new organization should be required to have a track record of at least a year of financing activity. These would allow a fledging community development organization to create a track record of success and permit the CDFI Fund to fully evaluate the potential new CDFI. Such a new organization could then be evaluated in the same manner as other CDFIs, and each of the CDFI certification tests can be fully satisfied.

However, a CDFI should be a true financing entity which employs its assets toward a primary mission of community development. A CDFI should not be able to qualify as a financing entity if it does not employ its own assets, and the entity engages merely in servicing or brokerage. This may allow non-CDFI organizations to successfully apply for and benefit from certification.

D. *Serves an Investment Area or Targeted Population*

<u>Threshold Target Market Test</u>

Clearinghouse believes that the current 60% threshold for the Target Market test is the right standard. The current threshold preserves a balance between ensuring service to Target Markets and allowing responsiveness and flexibility in lending. Furthermore, there should not be different thresholds for different institution types. Whether a CDFI is an insured depository institution, credit union, nonprofit or for-profit loan fund, or venture capital fund, the threshold should remain the same across the board. A CDFI should be evaluated based on its service for and accountability to its Target Markets. This will ensure fair and consistent reporting and will not penalize nor favor any particular institution type.

The current self-reporting of summary data in combination with the Annual CIIS Report is sufficient to demonstrate that a CDFI meets the threshold. The CDFI Fund is able to ascertain quickly whether or not the CDFI has met the threshold through the summary data, and this can be verified with more detailed data collected by the Annual CIIS Report. Each transaction closed by the CDFI is reported and includes details on the transaction and its impacts. These two reports combined are sufficient to determine whether a CDFI is serving its Target Market. In instances where there are large inconsistencies between the summary data and Annual CIIS Report, the CDFI Fund should inquire and reasonably request more information from the CDFI for clarification.

Financial Services should be taken into consideration, when necessary, to determine whether a CDFI has met the required threshold. Clearinghouse provides free technical assistance to most of its borrowers in its normal course of business. Before we close the transaction, free technical assistance is provided by our staff. CDFIs that provide this free service should receive credit toward meeting the threshold test. This credit should be considered in conjunction with the provision of Financial Products. A CDFI should be required to meet the current threshold at 60%, and in the instance where a CDFI is slightly short of meeting the 60% threshold, Financial Services can be considered to help the CDFI meet the threshold.

The most recent fiscal year should determine whether a CDFI meets the threshold test and should be sufficient in and of itself. However, in instances where a CDFI does not meet the threshold test in the most recent fiscal year, then the CDFI should be able to use the average of its three-year track record, including the most recent fiscal year, to meet the threshold. This flexibility will allow CDFIs, who otherwise have a convincing track record, to improve on their performance, and return to the 60% threshold.

Targeted Populations

The CDFI Fund has identified certain Other Targeted Populations which historically have lacked access to capital. In addition to the group the CDFI Fund has already identified, Clearinghouse believes that both veterans and people with disabilities should be considered Other Targeted Populations. These two populations have historically lacked access to capital and represent a high-risk for dependency on public support. If these two additional populations were automatically accepted as Other Targeted Populations, CDFIs would be able to react swiftly to their needs.

National Target Markets

CDFIs that designate a National Target Market should do so with reasonable expansion and in connective markets. The expansion to a National Target Market should be gradual to ensure that all Targeted Populations served through the expansion are adequately represented by an accountability board or committee. In addition, financial and human resources should be considered when determining whether the National Target Market expansion is reasonable before approval. Does the CDFI have adequate financial capacity to provide Financial Products and Services to these areas? Does the CDFI have adequate staffing to accommodate the expansion? In addition, CDFIs that serve multiple markets that are comprised of geographically unconnected markets should require those CDFIs to explain why its markets are seemingly unconnected.

E. *Development Services*

In accordance with our belief in the efficacy of a facts and circumstances approach to the evaluation of CDFI activity, Clearinghouse does not believe that Development Services should be explicitly defined, but instead should be handled in the manner that Target Markets are handled. Namely, some Development Services should automatically and explicitly qualify (such as business planning, management assistance, or any other Development Service currently accepted), but other Development Services should be permitted as the furtherance of a CDFI's primary mission, if a CDFI were to demonstrate the efficacy and necessity of such service in its Target Market.

The CDFI Fund should not require CDFIs to provide corresponding Development Service for each Financial Product because the needs of CDFI borrowers are so diverse. Some borrowers have sophisticated financial operations and have no need of Development Services, but still lack adequate access to capital. This can happen because the borrower, such as a newly created nonprofit lacks a long track record, or one who plans to expand operations, or one which has identified a new community development need. Other borrowers require extensive Development Services, but may still fail to qualify for a loan at that time. CDFIs, through their knowledge of the community and their relationships with borrowers and technical assistance providers (e.g., small business development centers), are best placed to evaluate the need for Development Services and Financial Products, and should not be required to marry these together if individual borrowers have need of only one.

In addition, the needs of Target Markets change as the populations grow and market conditions change, and as such they require a dynamic mix of Development Services each year. A CDFI should not be required to offer Development Service each year in order to maintain certification, but should instead be responsive to needs in the Target Market.

F. *Accountability*

Board Members

Generally, a CDFI should meet the financing test through a predominance of assets, and this standard should apply also to the board composition: a predominance of board members should represent and provide accountability to a Target Market. This requirement should include delegated committees and advisory board together in the aggregate to ensure that the CDFI, as a whole, maintains accountability to its chosen Target Market. However, representation of the Target Market on an advisory board, or even the board of directors, should not be sufficient to demonstrate accountability. The goal of any accountability test is to show that the CDFI responds to needs in its Target Market. Governing boards should appropriately direct the activities of a CDFI, which can then demonstrate accountability through its track record and through the deployment of a predominance of its assets. In addition to the governance structure, a CDFI can show its accountability through financial and impact reporting within the Annual CIIS Report.

Furthermore, accountability requirements should not differ based on the chosen types of Target Market. Many borrowers can be disadvantaged in several ways, and Target Markets can often overlap. Different standards for different markets could create situations where a CDFI would direct its activities to favor one Target Market over another because the accountability requirements are different, rather than permitting a CDFI to fully assess the community development needs.

G. *Non-Governmental Entity*

The establishing documents, corporate ownership structure, and governing bodies should each be evaluated to determine if an entity is truly non-governmental.

II. Certification Policy and Procedures

The CDFI Fund should request this information as needed during certification or re-certification in order to best evaluate the CDFIs that fall under its purview.

There are numerous sources of data which CDFIs already provide, which would enable the CDFI Fund to issue certifications, but without creating an undue burden on the industry. Chief among these is the Annual CIIS Report, which CDFIs provide every year. Other sources can include annual financial statement or single audits, NMLS reports or applications to the CDFI Fund under its various programs.

III. General Certification Questions

All CDFIs should be evaluated equally based on their ability and track record of fulfilling their primary mission in their Target Markets. We believe that certification as a CDFI is valuable and meaningful, and that any CDFI should be able to demonstrate compliance with CDFI certification requirements, as well as accountability to its Target Markets.

A CDFI can have many reasons for expanding, reducing or otherwise altering its corporate structure, and should be permitted to have a structure encompassing different Subsidiaries or Affiliates. However, the goal of such a structure should be for a bona fide CDFI purpose, and no entity should be able to creatively skirt or circumvent CDFI requirements through its governing structure. To this end, a CDFI should be required to include in its certification all members of a controlled group, and the controlled group as a whole should be able to demonstrate accountability to its primary mission and Target Market.

CDFI certification standards should take a facts and circumstances approach by which innovative CDFIs are allowed to determine how best to serve their Target Markets. "Bright-line" tests encourage CDFIs to work to meet those tests, and do not account for situations where, in a CDFI's honest determination, the best service of a Target Market conflicts with such "bright-line" tests. As such, the CDFI Fund should provide a "bright-line" rule as the initial test, but also allow for the consideration of other factors on a case-by-case basis, if a CDFI demonstrates a compelling case for their activity. Providing guidance through thresholds and benchmarks, where possible, will provide certainty for CDFIs. However, the CDFI Fund should also recognize that there are often extenuating circumstances that may affect a CDFI and its certification, and a CDFI should always be encouraged to best serve its Target Market.

Clearinghouse strongly feels that a balanced certification requires consistent standards across all types of institutions. Different standards would lead CDFIs to specific institutional types that have the easiest standards, or may make some types unworkable for CDFI certification, without regard to the primary mission, service and accountability to Target Markets, or to a track record of success in community development.

Lastly, a significant aspect of the Certification Application Review process depends on the functionality of AMIS. Improvements can be made to the user interface and system that can increase efficiency and user friendliness. Below are details of suggested improvements:

1. A clear indicator that the report was submitted at the top the page. Currently, the "report status" is on the fourth line and only a small "lock" icon appears near the "submit" button after the report is submitted. Moving the "report status" to the top or as the first field would make it easier for users to quickly identify the status.
2. When service requests are submitted, the respective CDFI should be notified of the CDFI Fund staff member who is handling the ticket. In addition, when the ticket is closed the CDFI should be notified and given an explanation of the action taken to successfully close the ticket.
3. Importing data directly from Salesforce compatible CRM can increase efficiency. Currently, Clearinghouse is building a new CRM, which is based off Salesforce. The compatibility in its CRM and AMIS and/or Annual CIIS Report would greatly shorten the time associated with reporting and improve accuracy of the data.

Exhibit B

Proposed Rules

Federal Register

Vol. 82, No. 5

Monday, January 9, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

Announcement Type: Notice and Request for Information

SUMMARY: The Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury, requests comments from the public regarding the current policies and procedures to certify an organization as a Community Development Financial Institution (CDFI). Capitalized terms found in this notice are defined in the regulations that govern the CDFI Program, in our regulations.

DATES: Written comments must be received on or before March 10, 2017 to be assured of consideration.

ADDRESSES: Submit your comments via email to David Meyer, Certification, Compliance Monitoring and Evaluation (CCME) Manager, CDFI Fund, at *cdfihelp@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: David Meyer, CCME Manager, CDFI Fund, 1500 Pennsylvania Avenue NW., Washington, DC 20220 or email to *cdfihelp@cdfi.treas.gov.* Information on CDFI Certification may be obtained on the CDFI Fund's Web site at *https://www.cdfifund.gov/programs-training/certification/Pages/default.aspx.*

SUPPLEMENTARY INFORMATION: Pursuant to the CDFI Fund's authorizing statute (the Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4701 *et seq.*) (the Act) and the regulations that govern the CDFI Program (12 CFR part 1805), a community development financial institution (CDFI) is a legal entity that: (i) Has a primary mission of promoting community development; (ii) serves an investment area or targeted population; (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.

In accordance with the statutory definition, the CDFI Fund has established seven tests, described below, to certify an Applicant financial entity as a CDFI. Applicants provide legal documentation, narratives and financial data to demonstrate their ability to meet the certification criteria. Applications are accepted on a rolling basis and may be submitted more than once, if declined. Certified CDFIs must complete an annual recertification process to update the financial and organization data contained in the original certification application. CDFI certification application and supplemental information can be found on the CDFI Fund Web site.

With this Request for Information (RFI), the CDFI Fund is embarking on a review of its CDFI certification tests to ensure that they continue to meet the statutory and regulatory requirements and the evolving nature of an industry that has changed significantly since the CDFI Fund's establishment in 1994. Since the first CDFIs were certified, the universe of certified CDFIs has grown from 196 in 1997 to over a 1,000 in number today, with over $100 billion in total assets and headquarters in all fifty states and several territories. It is a goal of the CDFI Fund to foster a diversity of CDFI types, activities, and geographies, and to enable market-driven solutions to emerge in a constantly changing economic environment.

In addition, the significance of CDFI certification has increased over the years. While CDFI certification continues to make an entity eligible for various programs at the CDFI Fund (CDFI Program, Native American CDFI Assistance Program, Capital Magnet Fund, and the CDFI Bond Guarantee Program), because it is seen as indicating a strong community development mission, it also has come to serve as a qualifier for other Federal government programs and benefits. These include, among others, the Small Business Administration's Community Advantage program and Federal Home Loan Bank membership, as well as consideration for certain investments under the Community Reinvestment Act and, pursuant to 12 CFR 1026.43(a)(3)(v)(A), an exemption from the Consumer Financial Protection Bureau's ''Ability to Repay'' rule. The CDFI Fund believes that it is important that certification remain a mark of confidence in an organization's commitment to a community development mission.

It also is imperative that CDFI certification criteria continue to support, rather than inhibit, the growth and reach of CDFIs, especially as it relates to their ability to take advantage of new technologies. These new technologies create the potential for mission-driven organizations like CDFIs to extend their reach and impact in order to improve access to financial products and services for underserved communities and populations wherever they are. This raises questions, however, of whether CDFI certification—particularly in terms of a CDFI's ability to define a Target Market and demonstrate accountability to that Target Market—is currently designed to enable such scope, which was neither possible nor envisioned when the criteria were first established.

Through this RFI, the CDFI Fund seeks feedback from the public on certain aspects of the certification criteria and process, as listed in Sections I and II. We also seek any additional information beyond these questions that members of the public believe would assist in updating the CDFI Fund's certification policies. The CDFI Fund intends to consider the feedback received through this RFI as it reexamines its current criteria and proposes any revisions to its CDFI certification policies. In making any changes to the existing criteria, the CDFI Fund will seek to ensure that certification continues to foster a diversity of CDFI types, activities, and geographies; allows for innovation that supports the growth and reach of CDFIs; and signifies confidence in a strong community development mission.

I. Certification Criteria

A. *Legal Entity:* To satisfy the legal entity test, the CDFI Fund requires evidence of an Applicant's incorporation/organization/establishment, such as IRS documentation, establishing documents filed with appropriate authorities, or charter numbers for Insured Depository Institutions and Credit Unions at the time of certification application.

1. The statute does not indicate how long an organization must be in existence to be considered a ''person (other than an individual).'' Should there be a minimum period of time an organization should be in existence before applying for CDFI certification? If so, how long? If not, why not?

2. Is there additional documentation, beyond an organization's establishing documents filed with State jurisdictions, that should be accepted to demonstrate that an organization is a legal entity?

B. *Primary Mission:* The statute states that a CDFI must have ''a primary mission of promoting community development,'' but specifies few criteria for meeting that test. The CDFI Fund currently allows Applicants for certification to meet this test by providing board-approved organizational documents that demonstrate that the Applicant has a primary mission of promoting community development along with a narrative statement describing how the Applicant's mission is consistent with the CDFI Fund's and a brief description of Financial Products offered. Insured Credit Unions that have received a Low Income Designation from the National Credit Union Administration are deemed to have met this criterion by virtue of their designation.

1. Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate an Applicant's primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund provide a more explicit, possibly quantitative, definition of what it means to ''promote community development'' that Applicants would be required to meet? If so, what should be the definition and what test should be applied? Are there criteria that the CDFI Fund should not consider and why?

2. Should there be different standards for meeting the primary mission test for nonprofit versus for-profit organizations, particularly for-profits that are not Insured Depository Institutions? If so, what different standards should be applied?

3. What evidence can the CDFI Fund use to confirm an Applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose actions do not demonstrate intent to create community development and/or are predatory in nature?

4. To what extent should the CDFI Fund evaluate the Financial Products and/or Financial Services offered by an Applicant to determine its ability to meet the primary mission test? What test would the CDFI Fund apply in any such evaluation of Financial Products and/or Financial Services?

5. Currently, by statute, Depository Institution Holding Companies wishing to be certified as CDFIs must provide documentation that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test. Should the CDFI Fund also make this a requirement for Non-Regulated CDFIs, for example, a Non-Regulated for-profit financial institution? Why or why not?

C. *Financing Entity:* Insured Depository Institutions and Credit Unions are deemed to automatically meet this criterion. Non-Regulated CDFIs must demonstrate that they engage in direct financial activity (*e.g.,* the provision of Financial Products, Financial Services, and Development Services) as reflected on financial statements and executed notes, and must dedicate a predominance of their assets to Financial Products, Development Services, and/or similar financing.

1. The CDFI Fund does not currently define the term ''predominance,'' but in practice accepts a plurality of assets as meeting this criterion. Should the term ''predominance'' be defined more specifically, and if so, how?

2. Should entities that provide less than a plurality of financing activity ever be considered Financing Entities? If so, under what circumstances and is there a minimum level of activity that should be required?

3. Currently, the amount of assets and staff time dedicated to financing activities are used to measure the level of a CDFI's financing activity. How else could a CDFI's level of financing activity be measured?

4. For Non-Regulated CDFIs, is the current ''predominance of assets'' test appropriate, or should alternatives or additional considerations be permitted?

5. Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI's financing activities?

6. Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities?

7. Should an organization applying for CDFI certification be required to transact a minimum number or dollar amount of loan or equity investments to be considered a financing entity? Should the Applicant be required to have at least one or more years of loan or equity investment origination? If so, what should those rules be?

8. Should an organization that only services loans or Equity Investments or has very few transactions be considered a financing entity?

9. Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status?

10. Currently, non-arms-length transactions do not contribute to meeting the financing entity criteria. For example, transactions made with Subsidiaries and/or Affiliates are not considered to be arms-length transactions. Should some transactions with Affiliates be permissible as evidence of an organization being a financing entity? If so, which ones? How should an ''arms-length transaction'' be defined?

11. Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not?

12. Current CDFI Program regulations use the term ''similar financing activities'' in its definition of the term ''Financial Products.'' How should the CDFI Fund determine what is included in ''similar financing activities?''

D. *Serves an Investment Area or Targeted Population:* Applicants for certification must identify the Investment Area(s) and/or Targeted Population(s) they intend to serve as their Target Market.

1. Threshold Target Market Test: Although no threshold level of service is indicated in the statute or regulation, current CDFI Fund policy requires that an organization must serve at least one eligible Target Market and must direct at least 60 percent of all of its Financial Product activities to one or more eligible Target Market to qualify for certification. In general, both the number and dollar amount of the organization's Financial Product activities should be at least 60 percent of all of its Financial Product activities in the most recent fiscal year. If an organization does not meet the 60 percent threshold in terms of either number or dollar amount of transactions (but not both), the organization can

provide an argument as to why the figure is less than 60 percent and the CDFI Fund reserves the right to accept or reject the explanation.

a. Is the current standard that 60 percent of a CDFI's Financial Product activities must be in qualified Target Markets the right standard? If not, what percentage of transactions should be in and/or to a qualified Target Market to demonstrate that an organization serves that Target Market and why?

b. Should there be different thresholds for different institution types (*i.e.,* Insured Depository Institutions and Credit Unions, nonprofit loan funds, and venture capital funds)?

c. The CDFI Fund currently relies on self-reported summary data submitted by Applicants to demonstrate that they meet the Target Market threshold test. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?

d. The August 31, 2015 Interim CDFI Program Regulations added the provision of Financial Services as a means of demonstrating that an applicant serves a Target Market. However, the CDFI Fund does not currently have a method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured? If an Applicant requests credit for providing Financial Services, should there be a separate minimum level of Financial Products that must be provided by the Applicant?

e. The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this the appropriate time period to consider, or should a longer period of time be considered? If so, should the applicant be required to meet the threshold in each year of the test, for a time period, or should an average be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?

2. Investment Areas: The statute requires that an Investment Area must meet at least one of the economic distress criteria (poverty rate greater than 20 percent; Median Family Income (MFI) at 80 percent or below specific MFI benchmarks; unemployment rate 1.5 times the national average) and has significant unmet needs for Financial Products and Services, or is wholly located within an Empowerment Zone or Enterprise Community.

a. The CDFI Fund's current practice is to define Investment Areas that are composed of one or more units of geography that meet certain distress criteria. Units include but are not limited to counties, census tracts, and Indian Reservations. Should the CDFI Fund change this practice? If so, how?

b. Currently the CDFI Fund allows Investment Areas to be composed of a set of contiguous geographic units that may include a small portion of units that individually do not qualify as Investment Areas. Should the CDFI Fund continue this practice, or should all units within the Investment Area meet the Investment Area qualifications?

3. Targeted Populations: Targeted Populations include Low Income Targeted Populations (LITP) and Other Targeted Populations (OTP) for a specific geographic unit. LITP, for a specified geographic unit, by statute includes individuals whose family income (adjusted for family size) is 80 percent of the area MFI (for metropolitan areas). LITP in non-Metropolitan Areas is the greater of 80 percent of the area MFI; or 80 percent of the statewide non-Metropolitan Area MFI. The CDFI Fund currently includes, for a specific geographic unit(s), African-Americans, Hispanics, Native Americans, Native Alaskans, Native Hawaiians, and Other Pacific Islanders among the groups automatically considered eligible for an OTP Target Market. Applicants are permitted to seek OTP recognition for other populations by demonstrating that the group lacks access to capital.

a. Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?

b. CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?

4. National Target Markets: Currently, in order to be certified with a Target Market national in geographic scope, CDFIs need to show that they have conducted their financing activities broadly across the variously defined regions of the country, (*e.g.* Northeast, West, Midwest, South, Southeast, etc.)

a. Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments?

b. Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these practices as constituting a national Target Market?

E. *Development Services:* A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. Development Services means activities undertaken by a CDFI, its Affiliate or contractor 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. For example, such activities include, but are not limited to, financial or credit counseling; homeownership counseling; and business planning and management assistance.

1. Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?

2. Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service?

3. Should a certified CDFI be required to offer each Development Service each year to maintain certification status?

F. *Accountability:* The CDFI Fund currently requires that a CDFI maintain accountability to its Target Market through representation on its governing board and/or advisory boards. Prior to recent changes in the regulation, a CDFI could demonstrate accountability through other mechanisms such as focus groups, community meeting, and/or customer surveys.

1. What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, *i.e.* governing vs. advisory boards?

2. Is representation on an advisory board sufficient to demonstrate accountability?

3. Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?

4. Is a business plan and a stratified, statistically significant random sample

of lending by asset class and location sufficient to document accountability? Under what circumstances?

5. Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how?

6. How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (*e.g.,* small businesses, micro businesses, and affordable housing developers, charter schools), but whose ''end-beneficiaries'' are?

7. How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? In this context, how should the term ''local'' be defined?

8. How should an Applicant that utilizes a web-based lending platform, especially one that serves a national Target Market, demonstrate accountability?

G. *Non-Governmental Entity:* By statute, a CDFI Shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. In the CDFI Certification application, the Applicant must respond to a series of questions designed to surface/discover issues or circumstances that may prevent an Applicant from meeting this criteria.

1. Are the current standards for establishing that an Applicant is not owned or controlled by a governmental entity sufficient?

2. Are there additional or alternative questions and/or documentation the CDFI Fund should require to determine if an Applicant is an agency or instrumentality of a Federal, State or local government?

II. Certification Policy and Procedures

A. Should the CDFI Fund request information on the reason for applying for certification and intended use (*e.g.,* funding requirement, marketing)?

B. Are there additional sources of data collected by other federal agencies that can be used to meet any of the seven certification tests? If so, please describe.

III. General Certification Questions for Public Comment: Through This RFI, the CDFI Fund Invites Comments and Responses to the Following Questions Regarding CDFI Certification

A. ''Community-based'' is a term often used to describe CDFIs. How should ''community-based'' be defined and what does it mean for CDFIs to be ''community-based?''

B. Although not defined in statute, the CDFI Fund allows Applicants that serve Native communities to self-designate themselves as Native CDFIs and apply for Financial Assistance and Technical Assistance through the Native CDFI Program. Applicants that self-designate as a Native CDFI must attest to providing 50 percent or more of their products and services to Native lands or Native populations. Should the CDFI Fund continue to allow Applicants to self-designate as Native CDFIs or should there be more defined standards that the CDFI Fund should verify? If so, what should they be?

C. Should CDFIs be allowed to be composed of multiple legal entities (Subsidiaries and/or Affiliates)? And if so, must a CDFI include all of its Subsidiaries and/or Affiliates for consideration?

D. Should CDFI certification standards have more ''bright-line'' tests, *i.e.* specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?

E. In addition to earlier questions regarding potentially different Primary Mission or Target Market standards based on institution type, are there other CDFI certification criteria standards that should vary based on institution type or the type of CDFI?

F. Should ''start-up'' entities be able to be certified? How should the term ''start-up'' be defined?

G. Are there additional areas of CDFI certification policy or the CDFI certification application review process that could use improvement? If so, how?

Authority: 12 U.S.C. 4701 *et seq.;* 12 CFR 1805.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2017–00013 Filed 1–6–17; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 160907827–6827–01]

RIN 0648–BG02

Mallows Bay—Potomac River National Marine Sanctuary; Notice of Proposed Rulemaking and Availability of Draft Environmental Impact Statement and Management Plan

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to designate approximately 52 square miles of waters encompassing and surrounding Maryland's Mallows Bay as the Mallows Bay—Potomac River National Marine Sanctuary (MPNMS or sanctuary). NOAA also proposes regulations to implement the sanctuary designation and establish the sanctuary's terms of designation to protect historical, archeological, and cultural resources of national significance. A draft environmental impact statement (DEIS) and draft management plan (DMP) have also been prepared for this proposed action. The purpose of this action is to supplement and complement current Maryland state regulations and resource protection efforts to ensure long term protection of the nationally significant collection of historic shipwrecks and other maritime cultural heritage resources. NOAA is soliciting public comment on the proposed rule, draft environmental impact statement, and draft management plan. NOAA will also begin consultations under Section 106 of the National Historic Preservation Act (NHPA) and solicit public comments specifically related to the identification and assessment of the historic properties within the affected area in compliance with Section 106 review process.

DATES: NOAA will consider all comments received by March 31, 2017. Public meetings will be held on the following dates:

(1) March 7, 2017, 6:00 p.m. to 9:00 p.m., La Plata, MD, and

(2) March 9, 2017, 6:00 p.m. to 9:00 p.m., Arnold, MD.

ADDRESSES: You may submit comments on this document, identified by NOAA–

CRF USA

Community Reinvestment Fund, USA
801 Nicollet Mall, Suite 1700 West
Minneapolis, Minnesota 55402
800 475.3050/612 338.3050 tel
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Capital for Communities –
Opportunities for People®

March 10, 2017

Mr. David Meyer
Certification, Compliance Monitoring and Evaluation Manager
Community Development Financial Institutions Fund
1801 L Street, NW 6th floor
Washington, DC 20036

Submitted via email to cdfihelp@cdfi.treas.gov

RE: CDFI Fund Certification Policies and Procedures

Dear Mr. Meyer:

Community Reinvestment Fund, USA, appreciates the opportunity to provide our views on the CDFI Fund's current policies and procedures used to certify an organization as a Community Development Financial Institution (CDFI) as requested in the *Federal Register* on January 9, 2017. These policies and procedures are important to achieving the mission of the CDFI Fund as certification is the first step to accessing CDFI Fund programs and capacity building resources. However, during the past 23 years, the significance of certification has grown beyond mere eligibility for financial and technical assistance from the Fund. CDFI certification carries the imprimatur of strong community development mission enabling these organizations to not only participate, in other federal programs, but also to access private funding. Most notably, loans and investments in CDFIs are deemed eligible for consideration under the Community Reinvestment Act. Philanthropic institutions and increasingly private "impact" investors have come to rely on this designation as a sign that an organization has a true mission of and commitment to community development.

Overview

CRF is a national, market-driven nonprofit Community Development Financial Institution headquartered in Minneapolis, MN. We tap the capital markets to stimulate growth and job creation in economically challenged rural and urban areas across the country. We use the tools of Wall Street to accomplish our mission of empowering people to improve their lives and strengthen their communities through innovative financial solutions. Since 1988, CRF and its affiliates have delivered more than $2.2 billion in loans, investments and bonds located in more than 900 communities across the country. In partnership with over 200 local lending partners, we have funded more than 2,600 loans in 48 states and the District of Columbia. Working collaboratively with local lending partners, CRF has helped to improve the lives of more than 1.7 million people annually by financing small businesses, charter schools, health clinics, and community facilities; including more than 19,000 affordable housing units, and creating or retaining 79,000 living wage jobs.

CRF has been an innovator and a participant in a wide range of federal programs. CRF and its affiliate, National New Markets Tax Credit Fund, Inc. (NNMTCF) have become one of the largest New Markets Tax Credit (NMTC) Allocatees in the country, receiving tax credit allocations in seven of the ten funding rounds totaling more than $830 million and investing

$52.5 million on behalf of other Allocatees, providing 393 NMTC loans to date. In 2013 CRF was selected as the first Qualified Issuer (QI) in the inaugural round of the CDFI Bond Guarantee Program. Since that time, CRF has issued four bond transactions on behalf of six CDFIs totaling $590 million.

With the contraction in bank lending to small businesses during the Great Recession, CRF sought to address the tremendous needs of underserved borrowers and firms located in distressed communities to access appropriate credit products. We obtained one of 14 national non-depository SBA 7(a) licenses to offer this government guaranteed loan product to borrowers unable to obtain conventional credit, typically small businesses located in low-income areas or those owned by women, people of color and/or veterans. Since launching our SBA 7(a) lending product, CRF has made more than 300 7(a) loans totaling $168 million helping to create or retain more than 5,900 jobs. CRF currently ranks among the top 100 SBA 7(a) lenders in the country.

Comments

CRF would like to thank the CDFI Fund staff for undertaking this review of its certification policies and procedures. This is an issue of particular importance to national CDFIs like CRF for several reasons. As a national organization employing a diverse set of lending and investment products and programs, we strongly support the Fund's stated goal of fostering "…a diversity of CDFI types, activities, and geographies, and to enable market-driven solutions to emerge in a constantly changing economic environment." The world into which CDFIs were born in 1994 has changed in almost every conceivable way. Not only has the number of CDFIs grown from nearly 200 to more than a thousand, but the types of financing products and services offered have expanded to virtually every corner of the financial services field. More importantly, the environment in which CDFIs operate has changed dramatically. Competition from other financial service providers has increased exponentially while the technology used to deliver products and services has undergone a transformation comparable to that which occurred during the Industrial Revolution. Today many potential borrowers seek funding online rather than through conventional institutions. To serve their customers, CDFIs must adopt new operating and business models, new technology tools, develop new partnerships and new ways of thinking about how to achieve their missions.

CDFI certification regulations and guidance – the very passport that allows these organizations to tap vital sources of public and private funding - has largely remained unchanged since the Fund was established. This review of the Fund's certification framework is critical if CDFIs are to be financially sustainable and create meaningful impact for the communities and populations they are committed to serving. Modernizing certification policies and procedures will enable the CDFI industry to define a path to scale. Without such a path it will be difficult – perhaps impossible - to make a difference in the lives of low-income people and places. We believe these policies and procedures can be reformed by creating opportunities for new organizations to become CDFIs *without* sacrificing primary mission.
We are pleased to share our comments and recommendations below on the questions included in the CDFI Fund's Request for information.

Certification Criteria

<u>Legal Entity</u>
To satisfy the legal entity test, the CDFI Fund requires evidence of an Applicant's incorporation/organization/establishment, such as IRS documentation, establishing documents filed with appropriate authorities, or charter numbers for Insured Depository Institutions and Credit Unions at the time of certification application.

1. *The statute does not indicate how long an organization must be in existence to be considered a "person (other than an individual)." Should there be a minimum period of time an organization should be in existence before applying for CDFI certification? If so, how long? If not, why not?*

   In general, an Applicant should be in existence for at least one year before applying for CDFI certification. However, an exception should be made if an existing CDFI sets up a special purpose entity (SPE) and wishes to have this entity certified as a CDFI in order to participate in a federal program. For example, some CDFIs have expressed a need to establish an Affiliate that must also be certified as a CDFI in order for them to participate in the Bond Guarantee Program. The Fund has amended the certification regulation with respect to the financing entity test so as to allow the Affiliate CDFI to rely on the Controlling CDFI's track record in order to meet this test. We believe the requirement that an organization be in existence for one year should be waived for Applicants sponsored by a CDFI for purposes of participating in the BGP. There should be no waiting period for these Applicants as they are created for operational purposes to allow the sponsoring CDFI to access the BGP and therefore should be considered to have been in existence for the same amount of time as their sponsoring CDFI.

2. *Is there additional documentation beyond an organization's establishing documents filed with State jurisdictions that should be accepted to demonstrate that an organization is a legal entity?*

   Documents such as articles of incorporation filed with State jurisdictions seem to be the most reliable form of information to demonstrate that an organization is a legal entity. There may be other such documents, that we are not aware of, that would also be acceptable. Other commenters may provide alternative documentation that could be acceptable to the Fund.

<u>Primary Mission</u>
The statute states that a CDFI must have "a primary mission of promoting community development," but specifies few criteria for meeting that test. The CDFI Fund currently allows Applicants for certification to meet this test by providing board-approved organizational documents that demonstrate that the Applicant has a primary mission of promoting community development along with a narrative statement describing how the Applicant's mission is consistent with the CDFI Fund's and a brief description of Financial Products offered. Insured Credit Unions that have received a Low-income Designation from the National Credit Union Administration are deemed to have met this criterion by virtue of their designation.

1. *Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate an Applicant's primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund provide a more explicit, possibly quantitative, definition of what it means to "promote community development" that Applicants would be required to meet? If so, what should be the definition and what test should be applied? Are there criteria that the CDFI Fund should not consider and why?*

   As noted in the RFI, the authorizing statute states that a CDFI must have a "primary mission of promoting community development" but offers no specific criteria as to what constitutes such a mission. We recognize this leaves open the opportunity for Applicants to document a mission of community development that may not be reflected in *all* the activities of the organization. Nevertheless, CRF sees potential danger should the CDFI Fund adopt a more explicit or quantitative definition of what it means to "promote community development."

   A foundational principle of the Fund was to encourage a wide range of organizations using a variety of strategies to promote community development in distressed communities and on behalf of historically underserved populations. Allowing Applicants to provide board-approved documentation and a narrative statement to demonstrate a primary mission of community development permits organizations the ability to choose how they wish to meet this requirement. This flexibility fosters innovation in business models, organizational structures and approaches to promoting community development. Imposing a more explicit or quantitative definition would have to take into account the needs of such diverse communities and populations, as well as the capacity of organizations serving these borrowers, making it virtually impossible to set a standard that could be applied to all Applicants.

   When determining whether an Applicant meets the primary mission test, the Fund assesses the authenticity of the organization's commitment to its mission rather than the quantity of its lending or investing activities. An Applicant's operating history may be useful in demonstrating its commitment to mission. However, this should not disqualify or be required for new entities so as to allow CDFIs to be established in communities or among populations where no such institution may exist. Applicants should be free to submit information, including the nature and volume of their lending and/or investment activities, but the Fund should not require Applicants to submit such information for purposes of meeting the primary mission test.

   Finally, given the power and the tremendous growth in the use of social media and the internet, it might be useful for the CDFI Fund staff to review an Applicant's online presence to ensure consistency between the organization's brand, its messaging and its stated mission of community development. Although, subjective in nature, a review of the Applicant's website, any social media campaigns, as well as how they present their brand online, could provide additional insights as to whether an Applicant has a primary mission of community development.

2. *Should there be different standards for meeting the primary mission test for nonprofit versus for-profit organizations, particularly for for-profits that are not Insured Depository Institutions? If so, what different standards should be applied?*

   No, the same standards for the primary mission test should be applied to both nonprofit and for-profit organizations, regardless of whether the for-profit organization is an Insured Depository Institution. While there are far fewer non-depository for-profit certified CDFIs, we firmly believe that for-profit institutions can maintain a commitment to mission as well as their mandate to earn a profit. The emerging new forms of corporate governance, including B Corps, Low Profit Limited Liability Companies (L3Cs) demonstrates that mission and margin can successfully coexist. We are encouraged by the potential of these new innovative corporate structures to create better social and environmental outcomes for the people and places CDFIs serve.

3. *What evidence can the CDFI Fund use to confirm an Applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose practices do not demonstrate intent to create community development and/or are predatory in nature?*

   CRF wishes to thank the CDFI Fund for raising this very difficult but critical question. For the past 20 plus years, there has been relatively little concern about verifying or confirming an Applicant's stated community development mission. This situation changed with the dramatic growth of predatory home mortgage products that led to the bursting of the so-called "bubble" in the residential mortgage market. The financial crisis and the Great Recession that followed were devastating for low-income communities and their residents. Vast sums of wealth were stripped from families living in these communities who were largely people of color. This experience was a wake-up call for CDFIs on several fronts. They realized their customers had been targeted by large, well-resourced mortgage brokers and lenders with whom they simply could not compete. Not only were CDFIs powerless to prevent what was happening, but many of the borrowers victimized later arrived on our doorsteps looking for a way out of their predatory mortgage products. Many of these competitors were beyond the reach of regulators and free to offer products that were clearly unsafe for consumers. Subsequently, the Consumer Financial Protection Bureau was established and has taken steps to avoid such a crisis in the future.

   A parallel scenario is now playing out in the consumer and small business lending arena. The dramatic growth in online marketplace lending is filling the void left by traditional banking sector, which scaled back its small business lending in response to increased regulatory oversight and perceived concerns about risk. Financial technology ("fin tech)" firms have flooded the market fueled by an enormous influx of private equity/venture capital and the promise of double-digit returns[1]. Often these fintech firms are offering predatory loan products online to both small businesses and consumers while operating outside of any regulatory oversight. More and more borrowers, attracted by the speed and ease of accessing a small business or consumer loan from an online lender, are finding themselves saddled with multiple loans from these lenders that they are unable to repay. These customers are increasingly seeking help from CDFIs but in many cases it is too late to save the business.

The danger to CDFI customers is abundantly clear but these predatory lenders also pose a threat to the CDFI industry. Should an organization claiming to have a primary mission of community development be certified without actually adhering to such a mission, the value, the integrity and the very foundation of the CDFI industry could be put at risk. To avoid such a dangerous outcome, there are a number of steps the Fund might take to ensure that only Applicants with a true mission of community development receive the CDFI designation including, but not limited to:

- As discussed in #1 above, a review of marketing materials including, but not limited to, websites, social media campaigns, printed advertisements, or other collateral information available in the public domain could be conducted to affirm the Applicant's adherence to its stated mission. Such a review could be conducted at the discretion of staff or where concerns may exist.
- Where appropriate, requesting information on past operating history and practices from Applicants that have been in existence and can supply such information, showing the types of loans they offer, profiles of typical customers, and terms of their products. This may not be warranted in all circumstances as will be discussed in greater detail in #4 below and could be handled on a case by case basis.
- Thorough consideration of how the Applicant demonstrates and maintains accountability (discussed below) to its designated Target Markets can also shed light on whether an Applicant is truly committed to a mission of community development both rhetoric and its practices. An Applicant demonstrating effective mechanisms for accountability provides additional insurance that the Fund is certifying CDFIs with a proper mission of community development.

4. *To what extent should the CDFI Fund evaluate the Financial Products and/or Financial Services offered by an Applicant to determine its ability to meet the primary mission test? What test would the CDFI Fund apply in any such evaluation of Financial Products and/or Financial Services?*

Under most circumstances, the role of the CDFI Fund is not to evaluate the Financial Products and/or Financial Services offered by an Applicant for purposes of meeting the primary mission test. However, the explosion of new

[1]According to a 2015 survey conducted by Accenture, investments in "FinTech" (Financial Technology – the industry typically associated with marketplace lending) tripled from 2013 to 2014 moving from $4B to more than$12B respectively. Investors are citing the opportunity to earn double-digit returns in marketplace lending while often referencing the current lack of small business regulation as primary reason for investing.

financial products and services, particularly in the residential mortgage, small business, and consumer credit markets has raised concerns about the ability of borrowers to make informed financial choices. While CDFIs pride themselves on providing access to responsible, transparent credit products coupled with development services that help borrowers to be successful, other credit providers, particularly online and marketplace lenders, offer products and services customers simply do not understand and often cannot afford. As noted above, if an organization engaged in predatory lending were to become a certified CDFI, this could profoundly harm the value and the integrity of the CDFI brand.

The CDFI Fund should have the ability to review or evaluate the financial products and/or services being offered by an Applicant to ensure such products and services are not predatory in nature, the terms of the products and /or services are fully and clearly disclosed, and the Applicant does not employ misleading or inappropriate marketing techniques. We understand the challenge lies in trying to establish a standard or test to apply when evaluating financial products and/or services. Clearly, this will require further research and discussion with industry participants but one model the Fund may wish to consider is the Small Business Borrowers Bill of Rights[2]. This bill, fashioned by a multifaceted coalition of organizations, including several CDFIs, defines responsible small business lending based on six fundamental financing principles that all small businesses deserve, and articulates lender and broker practices that uphold these principles. In more highly regulated areas, such as mortgage lending and consumer finance, the Fund could look to existing federal or state laws and regulations to serve as a guide for what is acceptable when evaluating similar products and /or services offered by an Applicant who falls outside the current regulatory framework.

5. *Currently, by statute, Depository Institution Holding Companies wishing to be certified as CDFIs must provide documentation that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test. Should the CDFI Fund also make this a requirement for Non-Regulated CDFIs, for example, a Non-Regulated for-profit financial institution? Why or why not?*

We don't see a need to require Non-Regulated CDFIs to document that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test. In fact, such a requirement might limit the ability of CDFIs to exploring new approaches to increasing the sustainability of their organizations. As it becomes more challenging to raise resources from foundations and government agencies, CDFIs need to adopt innovative financing strategies to support their operations and programmatic activities. Having several entities under the umbrella of a mission-driven CDFI parent could strengthen its financial well-being. Given the changing landscape for funding CDFIs (e.g. potential for significant reduction in federal resources for community development) and

[2] http://www.responsiblebusinesslending.org

the growing emphasis on achieving self-sufficiency, the Fund should encourage CDFIs to develop creative funding structures and diversity their sources of financial support to scale their mission-driven activities. Furthermore requiring CDFIs to document that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test ignores a glaring oversight in the current certification regulations with regard to off balance sheet entities and activities. Under current regulations, CDFIs engaged in New Markets Tax Credit (NMTC) financing do *not* receive any consideration for these activities in terms of the Target Market test (addressed below), though they bring vital gap financing and significant community impact. Similarly, CDFIs may facilitate the flow of capital and credit to projects or programs without having their own capital at risk. For example, if an individual CDFI lacks the scale of capital to address a financing need but engages other financial institutions, like banks, to provide credit, the CDFI is strengthening the financial fabric of a community by helping borrowers to access conventional loans. CRF's initiative known as Detroit Home Mortgage (DHM) (http://www.detroithomemortgage.org) is just such an example. DHM is designed to address the appraisal gap in Detroit by working with five commercial banks to restart the conforming mortgage market in struggling neighborhoods throughout the city. Under this program, homeowners receive two loans – a conforming first mortgage and a second mortgage – to fund rehabilitation of a home. CRF conceived and launched this initiative. We manage the fund holding the second mortgages. Although we raised grant dollars for DHM, the scale of this operation far exceeds our balance sheet. Unlocking conventional bank financing was the key to success, yet our efforts and the sweat equity we invested are not counted towards our overall CDFI Target Market activities.

When the CDFI Fund was established, it was designed to support the model of a community-based organization serving a local market. As the industry has matured, CDFIs realize that to truly "move the needle" in terms of community impact, they must be able to reach into the capital markets, leverage the balance sheets of larger institutions and utilize technology to facilitate the flow of resources to low-income communities. The role of capital facilitator will become increasingly important if we are to bring about meaningful improvement for the people and places we serve. The Fund should find ways to encourage and recognize this new role for CDFIs, not constrain innovative financing strategies that emerge as CDFIs grapple with a declining pool of public funding sources.

Financing Entity

Insured Depository Institutions and Credit Unions are deemed to automatically meet this criterion. Non-Regulated CDFIs must demonstrate that they engage in direct financial activity (e.g., the provision of Financial Products, Financial Services, and Development Services) as reflected on financial statements and executed notes, and must dedicate a predominance of their assets to Financial Products, Development Services, and/or similar financing.

1. *The CDFI Fund does not currently define the term "predominance," but in practice accepts a plurality of assets as meeting this criterion. Should the term "predominance" be defined more specifically, and if so, how?*

   While the CDFI Fund's practice of defining the term "predominance" as a plurality of assets may be less precise than some might like, this definition has afforded CDFIs needed flexibility for the purposes of meeting the

Financing Entity test. The CDFI Fund uses the Asset Allocation Table contained in Attachment A – the data portion of the CDFI Certification Application to verify that an Applicant is dedicating a "predominance" of their assets to Financial Products, Development Services, and/or similar financing. Our understanding has been that the Fund wants to see that 51% or more of an Applicant's total assets are dedicated to financing products and related activities (including Development Services). This may be informal guidance but it led us to believe that Applicants/CDFIs were expected to dedicate the majority of their financial and technical assistance resources to financing and similarly related activities. The danger in defining the term "predominance" more precisely is that it could limit the Fund's discretion when certifying new or existing CDFIs. The strength of the certification process was that it allowed for a dialogue between the Applicant and the staff to discuss the unique structure and operational aspects of individual CDFIs.

The bigger concern we have is that the volume of CDFIs' off balance sheet activities has been increasing in recent years as these organizations utilize a variety of complex financing products and programs. For example, at the time the Fund was established the only major tax credit program available for community development was the Low-income Housing Tax Credit (LIHTC). Since that time, the New Market Tax Credit program has become a successful tool used by CDFIs to finance high impact projects in communities across the country. CDFIs marshal public and private resources in a variety of ways. Often their financing activities are conducted off balance sheet for tax, legal, or liquidity reasons. Yet these activities are clearly related business lines of the CDFI. Excluding off balance sheet activities does not present a full picture of the Applicant or CDFI as a financing entity. They should be allowed to count these assets for the purposes of this test, not penalized because of balance sheet constraints. We strongly urge the CDFI Fund to permit the inclusion of off balance sheet financing activities (including, but not limited to, New Markets Tax Credit, Low-income Housing Tax Credits, other tax credit transactions as warranted) conducted through Special Purpose Entities (SPEs) and other off balance sheet vehicles so these important financing activities are taken into account.

2. *Should entities that provide less than a plurality of financing activity ever be considered Financing Entities? If so, under what circumstances and is there a minimum level of activity that should be required?*

   Under limited circumstances, entities with less than a plurality of their assets dedicated to financing activity may be considered Financing Activities. One such scenario might involve newly launched or start-up organizations seeking certification with the understanding that the Applicant would achieve a plurality of financing activity within specified time period. A limited degree of latitude should be provided to the CDFI Fund as there may be unanticipated situations where it would be appropriate to waive this requirement for some period of time.

3. *Currently, the amount of assets and staff time dedicated to financing activities are used to measure the level of a CDFI's financing activity. How else could a CDFI's level of financing activity be measured?*

CRF believes there are alternative ways to measure the level of a CDFI's financing activity beyond the amount of its assets and staff time dedicated to such activities. For example, the CDFI Fund could take a "portfolio" approach to evaluating a CDFI's level of financing activity. This approach would take into consideration all of a CDFI's financing activities both on-balance sheet and off-balance sheet. As noted above in Q #1 and in Q #5 in the Primary Mission section, there should be a way for CDFIs to report on financing activities they *facilitated* – meaning without their involvement financing would not have been provided – but where they did not invest their own capital in the transaction. Thus a CDFI would be measured based on their "portfolio" of financing activities some of which involve direct investment of their own capital and, in other instances, where they invested their efforts in *securing* capital but the resources did not come from their balance sheet.

4. *For Non-Regulated CDFIs, is the current "predominance of assets" test appropriate, or should alternatives or additional considerations be permitted?*

   In general, the same standard of "predominance of assets" should be applied to both Regulated and Non-Regulated CDFIs. All types of CDFIs should be subject to the same standards.

5. *Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI's financing activities?*

   Yes, we support the comments of the CDFI Coalition on this question.

6. *Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities?*

   Yes, in certain circumstances Non-regulated CDFIs should be permitted to rely upon the financing activities or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities. For example, we support the CDFI Fund modification to the certification criteria in April 2015 through an interim rule that permitted an Affiliate of an Eligible CDFI to rely on the Controlling or parent CDFI's track record to meet the Financing Entity test for the purposes of participating in the CDFI Bond Guarantee Program. In this case, an Affiliate of an Eligible CDFI engaged in the CDFI Bond Guarantee program may utilize the activities of its parent CDFI to comply with the Financing Entity requirement for certification. We assume this modification under the Interim Rule remains in place and does not require further action.

7. *Should an organization applying for CDFI certification be required to transact a minimum number or dollar amount of loan or equity investments to be considered a financing entity? Should the Applicant be required to have at least one or more years of loan or equity investment origination? If so, what should those rules be?*

An organization applying for CDFI certification should be required to transact a minimum number but not dollar amount of loan or equity investments to be considered a Financing Entity. The expectation has been that an organization seeking to become a CDFI should demonstrate its ability to make loans or investments. While there has been no formal minimum number of transactions, it was generally understood that an Applicant should have completed about six loans or investments as evidence of its capacity to extend credit or capital. The CDFI Fund's *Supplemental Guidance and Tips to the CDFI Fund Certification Application* (Updated through February 2014) states on page 17, "An organization that is not a regulated entity must demonstrate that it has begun to use its own capital to provide Financial Products to non-affiliated entities. In general, to be deemed to have begun the use of 'its own capital,' the organization must have closed an appropriate number of transactions within the specified time period to demonstrate that it is in regular operation. In determining the appropriate number of transactions, the CDFI Fund, in its sole discretion, may consider a variety of factors."

We support preserving the CDFI Fund's discretion to determine the appropriate number of transactions an Applicant must complete to show it is in regular operation. CDFIs engage in different types of lending and investing activities and close vastly different numbers of transactions based on the nature of those activities. A CDFI micro-lender typically makes more loans in a given year than a CDFI making venture capital investments. In addition, launching a new CDFI requires a ramp up period when only a few loans or investments may be made. However existing organizations seeking certification may have a much larger number of loans or investments to demonstrate their operational capabilities. There may be instances when it would be beneficial for the CDFI Fund to certify organizations that have not been originating loans or investments for at least a year, such as in the case of communities affected by a natural disaster. Therefore, the Fund should have the ability to exercise discretion when certifying early stage organizations.

On a related note, the Fund should clearly define what is meant by a CDFI's "own capital". All CDFIs receive loans from banks or other funders which they use to make loans to borrowers in their Target Market(s). Often times, banks seeking to meet their Community Reinvestment Act (CRA) requirements provide resources to CDFIs because they have expertise in lending to low-income communities and people. If the capital CDFIs are utilizing comes from financial institutions, foundations, or government sources, can they claim they are truly using their "own capital"? This raises the question of whose capital are CDFIs really using and how long must resources reside on a CDFI's balance sheet in order to be deemed its "own capital"?

Many companies outsource major parts of their business to other firms that have a specific expertise creating networks to more efficiently produce goods and services. Similarly, many in the CDFI industry have begun to embrace the concept of financial networks to increase the scale, productivity and impact of our lending activities. Just as in the case of off balance sheet financing activities discussed above, if CDFIs were to implement lending or financial networks to more effectively deploy capital, where one CDFI might originate a loan using the capital of another organization (which may or may not be a CDFI), would such an approach run afoul of the requirement to deploy one's "own capital"? Would using a networked approach jeopardize a CDFI's certification status or prevent an Applicant from being certified as a CDFI, even though breaking up aspects of the lending function might produce a more sustainable CDFI industry and ultimately better outcomes for borrowers and communities? We believe these questions warrant further consideration by the CDFI Fund and discussion with industry participants.

8. *Should an organization that only services loans or Equity Investments or has very few transactions be considered a financing entity?*

   In our view, an organization that only services loans or Equity Investments should not be considered a Financing Entity nor should one that has only made a very small number of transactions. While we are not comfortable prescribing a specific volume of lending or investing activity as requirement or threshold for certification, there are some fundamental characteristics of a CDFI. The organization should be engaged in lending and investing on an ongoing basis and while the number of transactions may vary over time and under different economic conditions, there should be a reasonable prospect that the entity will be actively extending its own credit or capital. Simply servicing the loans of another lending organization should not qualify an Application to become a CDFI.

9. *Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status?*

   Except dire circumstances, such as the financial crisis and the Great Recession, it is reasonable to expect that CDFIs will be offering loans and Equity Investments each year. Like any other lender, CDFIs may decide to expand or contract their suite of credit products in response to market demand or need. Introducing a new financial product or service or discontinuing an offering will reduce origination volume in a given year. There may be periods during which a CDFI suspends its lending or investing activities due to risk or other market factors. The CDFI Fund should exercise its judgment rather than imposing an annual origination requirement for certified CDFIs. Moreover, we urge the Fund to provide a reasonable grace or cure period before revoking a CDFI's certification. A CDFI in this situation should be permitted to engage in a dialogue with CDFI Fund staff to explain the reasons why it has suspended its lending or investing activities.

10. *Currently, non-arms-length transactions do not contribute to meeting the financing entity criteria. For example, transactions made with Subsidiaries and/or Affiliates are not considered to be arms-length transactions. Should some transactions with Affiliates be permissible as evidence of an organization being a financing entity? If so, which ones? How should an "arms-length transaction" be defined?*

    No comment.

11. *Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not?*

    No comment.

12. *Current CDFI Program regulations use the term "similar financing activities" in its definition of the term "Financial Products." How should the CDFI Fund determine what is included in "similar financing activities?"*

    This phrase was most likely intended to provide the Fund with the option capture financing activities that it had not considered when the certification framework was first established. As the community development field has evolved and become more sophisticated, CDFIs adapted conventional financing products to suit their customers' needs or created new ones altogether. One set of financing activities we believe should be included in "similar financing activities" are those attributed to CDFI Intermediaries. Specifically, placing deposits in certified CDFI credit unions or banks, making loans or providing guarantees to other certified CDFIs, or other means of extending credit or supplying liquidity to certified CDFIs should be included in this category.

    It is also important to preserve the Fund's ability to expand the definition of "similar financing activities" so that CDFIs are encouraged to innovate and deploy new products. Community development borrowers deserve access to as wide an array of responsible products and services as possible. The certification criteria should reflect the dynamic nature of financing activities and ensure that CDFIs are not restricted to antiquated tools due to an outmoded framework.

Target Market

Threshold Target Market Test: Although no threshold level of service is indicated in the statute or regulation, current CDFI Fund policy requires that an organization must serve at least one eligible Target Market and must direct at least 60 percent of all of its Financial Product activities to one or more eligible Target Market to qualify for certification. In general, both the number and dollar amount of the organization's Financial Product activities should be at least 60 percent of all of its Financial Product activities in the most recent fiscal year. If an organization does not meet the 60 percent threshold in terms of either number or dollar amount of transactions (but not both), the organization can provide an argument as to why the figure is less than 60 percent and the CDFI Fund reserves the right to accept or reject the explanation.

1. *Is the current standard that 60 percent of a CDFI's Financial Product activities must be in qualified Target Markets the right standard? If not, what percentage of transactions should be in and/or to a qualified Target Market to demonstrate that an organization serves that Target Market and why?*

The current 60 percent standard for the volume of a CDFI's Financial Product activities deployed in qualified Target Markets is appropriate and should be maintained. However, the standard has worked well because of the latitude afforded the Fund when applying this standard to individual CDFIs. As noted in the preamble to this section, while CDFIs are generally required to extend 60 percent of both the number and dollar amount of their lending and/or investing activities in eligible Target Markets, if a CDFI does not meet the threshold in either the number or dollar amount (but not both), the Fund may accept an explanation as to why this situation has occurred and thus deem the CDFI to be in compliance with its certification requirements. This flexibility is crucial for CDFIs that make a large number of small loans (such as small business loans) as well as a small number of large loans (like multi-family affordable housing loans). A CDFI with this type of product mix may be able to meet the 60 percent test based on the dollar volume of its lending activities but not on the basis of the number of its loans.

We wish to reiterate the recommendation proposed in Q #1 of the Financing Entity section that CDFIs be permitted to count their off balance sheet financing activities, and specifically their NMTC transactions, towards the 60 percent threshold. CDFIs use these financing programs to complement their other lending/investing activities. They are clearly mission-aligned lines of business. Excluding off balance sheet activities does not present a full picture of how the Applicant or CDFI is serving its Target Market(s). They should be allowed to include these assets for the purposes of the 60 percent test, rather than being penalized for choosing to use tax credits or other off balance sheet strategies to meet their borrowers' financing needs. We strongly recommend that the CDFI Fund allow CDFIs to include NMTC and other similar off balance sheet financing activities conducted through Special Purpose Entities (SPEs) and similar vehicles so these important financing activities are taken into account under the Target Market test.

2. *Should there be different thresholds for different institution types (i.e., Insured Depository Institutions and Credit Unions, nonprofit loan funds, and venture capital funds)?*

   No, a uniform threshold should be provided across all types of CDFIs regardless of the type of institution. This standard has worked well in the past and should remain in place.

3. *The CDFI Fund currently relies on self-reported summary data submitted by Applicants to demonstrate that they meet the Target Market threshold test. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?*

   It is not clear why the CDFI Fund is raising the question of whether to make statistical sampling of transactions required and therefore, we have no comment.

4. *The August 31, 2015 Interim CDFI Program Regulations added the provision of Financial Services as a means of demonstrating that an applicant serves a Target Market. However, the CDFI Fund does not currently have a*

method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured? If an Applicant requests credit for providing Financial Services, should there be a separate minimum level of Financial Products that must be provided by the Applicant?

CRF does not offer Financial Services as defined by the CDFI Fund and has no comment on this question.

5. *The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this the appropriate time period to consider, or should a longer period of time be considered? If so, should the Applicant be required to meet the threshold in each year of the test, for a time period, or should an average be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?*

   The CDFI Fund should consider a 3 year rolling average of a CDFI's financial activity to determine whether it meets the threshold test. Normal variations in lending activity occur and major disruptions such as the Great Recession make it difficult to apply this test to a single year of financing activity.

   We also recommend that the CDFI Fund reinstate its policy of recertifying CDFIs every three years as annual certification presents a significant burden for many, especially smaller, CDFIs. At the very least, the Fund should consider recertifying CDFIs every two years so as to reduce this challenging reporting requirement.

<u>*Investment Areas*</u>*: The statute requires that an Investment Area must meet at least one of the economic distress criteria (poverty rate greater than 20 percent; Median Family Income (MFI) at 80 percent or below specific MFI benchmarks; unemployment rate 1.5 times the national average) and has significant unmet needs for Financial Products and Services, or is wholly located within an Empowerment Zone or Enterprise Community.*

1. *The CDFI Fund's current practice is to define Investment Areas that are composed of one or more units of geography that meet certain distress criteria. Units include but are not limited to counties, census tracts, and Indian Reservations. Should the CDFI Fund change this practice? If so, how?*

   In our view, the CDFI Fund's definition of Investment Areas is outmoded and potentially harmful to its mission in light of the profound changes taking place in certain markets. The small business lending arena is a prime example of why the Investment Area definition is too narrow. This market has undergone a major shift in new technology and delivery systems that are revolutionizing how small businesses obtain loans. Speed and ease of access are propelling the growth of national online and market-place lenders. Although the lion's share of small business credit is still provided by depository institutions, a new generation of customers raised on video games and comfortable operating on their smart phones could ultimately make conventional lenders obsolete.

CRF has always had a business model of delivering small business and other financing products to borrowers in low-income communities across the country. We firmly believe the future of small business lending in all communities and among all types of borrowers, including those unable to access traditional forms of credit, lies in meeting small business owners where they are while providing responsible loan products through a process that is seamless, simple, and fast. In the wake of the financial crisis, we became one of three CDFIs with a national SBA 7(a) license. We quickly discovered the enormous pent up demand for small business loans as banks retreated from this market, especially for loans below $1 million. As a CDFI, our mission is to empower borrowers through innovative financing solutions. Just like the internet, our borrowers know no geographic boundaries. Even with an expanded set of states comprising our Investment Area Target Markets, we clearly see a compelling need for a National Investment Area (IA) Target Market designation. We address this need and how the CDFI Fund can properly implement such a Target Market in the National Target Markets question below as well as in the Accountability section of this comment letter.

2. *Currently the CDFI Fund allows Investment Areas to be composed of a set of contiguous geographic units that may include a small portion of units that individually do not qualify as Investment Areas. Should the CDFI Fund continue this practice, or should all units within the Investment Area meet the Investment Area qualifications?*

   The CDFI Fund should continue the practice of allowing a set of contiguous geographic units to qualify as Investment Areas even if they include a small portion of units that individually do not qualify. Contiguous geographic units often share a lack of private capital investment even though a business on one side of a street is in an eligible census tract while another on the other side of the street is not.

<u>Targeted Populations</u>: *Targeted Populations include Low-Income Targeted Populations (LITP) and Other Targeted Populations (OTP) for a specific geographic unit. LITP, for a specified geographic unit, by statute includes individuals whose family income (adjusted for family size) is 80 percent of the area MFI (for metropolitan areas). LITP in non-Metropolitan Areas is the greater of 80 percent of the area MFI; or 80 percent of the statewide non-Metropolitan Area MFI. The CDFI Fund currently includes, for a specific geographic unit(s), African-Americans, Hispanics, Native Americans, Native Alaskans, Native Hawaiians, and Other Pacific Islanders among the groups automatically considered eligible for an OTP Target Market. Applicants are permitted to seek OTP recognition for other populations by demonstrating that the group lacks access to capital.*

1. *Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?*

   The CDFI should automatically expand the definition of OTP to match those that are eligible for other Federal programs that support economic development in Low-Income communities. As we have suggested in an earlier comment letter[3] the demographics of small business owners in this country are changing, especially in low-income communities and for underserved borrowers. As more and more CDFIs offer SBA products, accepting a broader definition of OTP will facilitate greater use of mutually reinforcing programs.

We urge the CDFI Fund to align its definition of OTP with what the SBA deems to be a "minority-owned" or "socially disadvantaged" firm. Under the Minority Small Business and Capital Ownership Development program, also known as the 8(a) Business Development (BD) program, individuals who are members of the following groups are deemed to be "socially disadvantaged" based on the fact they have been subject to "racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities": Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal) (13CFR 124 §124.103).

As the SBA has determined individuals in these racial, cultural, and ethnic groups face discrimination affecting their ability to access credit, we also request that CDFIs be certified to serve Target Markets using this expanded definition of OTP without having to undertake additional research or producing further studies documenting that these individuals lack access to affordable credit.

2. *CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?*

CDFIs approved to serve Targeted Populations should not be automatically approved to serve such Target Markets nationally. As a national CDFI, we believe an organization should make an intentional decision to serve a national Target Market(s). Therefore, a CDFI's business model, operational strategies and capabilities should reflect a national focus. These organizations should specifically request national certification and demonstrate their ability to serve such a market to the Fund. Similarly, CDFIs wishing to serve one or more states should be allowed to do so assuming they can demonstrate their capability to serve a statewide or multi-state market.

[3] See CRF's Comment Letter on the CDFI Fund's Annual Certification and Data Collection Report Form, September 8, 2014.

<u>National Target Markets</u>: Currently, in order to be certified with a Target Market national in geographic scope, CDFIs need to show that they have conducted their financing activities broadly across the variously defined regions of the country, (e.g. Northeast, West, Midwest, South, Southeast, etc.).

1. *Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments?*

   During the course of our 28 year history, CRF has extended credit in 48 states and the District of Columbia. We agree, it is highly unlikely that a CDFI will complete transactions in every state each year. The volume of CDFI lending activities is not large enough to achieve this level of geographic dispersion in such a short time. However, as an active small business lender, we strongly believe CDFIs, like any other lender or investor, need to be able to respond to demand in their Target Market(s).

   If an Applicant or existing CDFI requests National Target Market certification, and can demonstrate both the intent and capacity to serve such a Market either by virtue of its historical track record of making geographically dispersed loans or investments, or through some other means acceptable to the Fund, then such an Applicant/ CDFI should be granted national certification. Depending on how long the Applicant/CDFI has been in operation, a minimum geographic dispersion of actual loans or investments might consist of transactions in more than a specified number of states. Traditionally, when considering an application for national certification, the CDFI Fund has looked for loans/investments in groups of states including: the northeast, southeast, south central states, north central states, northwest, and the south west. We strongly encourage the Fund to consider an Applicant's or CDFI's entire portfolio of loans over time as evidence of its ability and willingness to make loans/investments on a national basis. An Applicant or CDFI should not be penalized for lack of loans or investments in a given state or states in a particular year, as this may reflect lack of demand for credit during a certain period of time.

2. *Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these practices as constituting a national Target Market?*

   As noted in our comments above (Targeted Populations Q #2), CDFIs seeking national Target Market certification should make an intentional decision to serve such a market and this decision should be clearly reflected in their business model, the operational structure and the organizational goals. We do not believe the CDFI Fund should make a determination about whether a CDFI serving multiple markets should be deemed to be serving a national Target Market.

Additional Recommendations on Target Markets:
The Fund should be permitted to certify Applicants and / or CDFIs Investment Areas and Targeted Populations before they have made a loan or investment in the requested Target Market. This requirement prevents new Applicants and existing CDFIs from entering new Target Markets and limits their ability to bring valuable products and services to underserved areas and individuals. It is an artificial cap on CDFI growth and impact. Instead Applicants and / or CDFIs should be asked to demonstrate through plans (e.g. business, marketing, or strategic plans), partnerships, research, or outreach activities they have conducted, as well as past expansion efforts, their intent and capacity to deliver financing products and / or services in a new Target Market(s).

Development Services
A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. Development Services means activities undertaken by a CDFI, its Affiliate or contractor 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. For example, such activities include, but are not limited to, financial or credit counseling; homeownership counseling; and business planning and management assistance.

1. *Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?*

The CDFI Fund should create a new category of Development Services comprised of services to other CDFIs. This new category would include loan servicing, contract underwriting, technology and other services that build or enhance the capacity of mission-aligned lenders including, but not limited to, CDFIs, public and/or private nonprofit organizations lending or investing in low-income communities or to low-income or disadvantaged populations. This new category draws on the approach described above (Financing Entity Q # 7) as to how financial networks or in this case, value exchange networks, might increase the scale, financial sustainability and community development impact of the CDFI industry. In a value exchange network, one CDFI provides services to another CDFI (or mission-aligned organization) enabling the recipient organization to be more effective in their community development lending or investing activities. Examples of CDFIs offering such services include: Pacific Community Ventures' national online business advisory services platform (https://businessadvising.org/) and its impact evaluation service (*Insight*); Reinvestment Fund's data service (Policy Map); or CRF's high touch contract loan servicing function that currently services 6700 loans totaling $1.2 billion on behalf of 52 organizations. We provide this service so that smaller CDFIs and nonprofits unable to make the necessary financial investments in infrastructure, technology and staffing have access to a high quality loan servicing platform. This service allows mission-driven lenders to focus on what they do best, making loans to low-income borrowers and projects and improves outcomes for their borrowers by providing loan servicing that is sensitive to their needs.
Development Services have evolved since the CDFI Fund was established. The Fund should expand the definition of Development Services by creating a new category to encompass high value services that improves the productivity and multiplies the impact of CDFIs and other nonprofit, mission-aligned lenders. We welcome a

dialogue with CDFI Fund staff, as well as industry participants, to capture and more clearly define these services and how they might be accounted for as a new category of Development Services.

2. *Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service?*

   CDFIs should *not* be required to provide corresponding Development Services for each Financial Product or Service offered. CDFIs should be accorded the flexibility to provide Development Services based on their business model, their evaluation of the market need as well as that of individual borrowers. Some borrowers may require such services and some may not. Moreover, under existing certification regulations, Development Services *do not* have to be offered by the CDFI itself, but may be provided by a third party contractor. How and what types of Development Services are made available to customers in conjunction with a CDFI's Financial Products or Services should remain at the discretion of the CDFI with the expertise to evaluate whether a borrower needs services and which ones will best meet their needs.

3. *Should a certified CDFI be required to offer each Development Service each year to maintain certification status?*

   Requiring a CDFI to offer Development Services each year to maintain certification status seems highly prescriptive and contrary to the definition of a CDFI. Instead, the Fund should look to the intent and capacity of a CDFI to offer Development Services. Through the recertification process, the Fund has the ability to monitor the Development Services offerings of a CDFI. Should the Fund have concerns that a CDFI is failing to comply with this test, it has the option of entering into a dialogue with the CDFI and/or to take specific steps to remedy the situation. Ultimately, the Fund has the ability to decertify or not renew the certification of any CDFI it believes no longer meets the requirements set out in the regulations and accompanying guidance.

Accountability
The CDFI Fund currently requires that a CDFI maintain accountability to its Target Market through representation on its governing board and/or advisory boards. Prior to recent changes in the regulation, a CDFI could demonstrate accountability through other mechanisms such as focus groups, community meeting, and/or customer surveys.

1. *What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, i.e. governing vs. advisory boards?*

   CRF believes a CDFI should maintain accountability to its Target Market(s) through its governing board. Governing boards have responsibility for overseeing the operations of a CDFI and therefore have the ability to hold the organization accountable to its Target Market(s). We fully support the use of other accountability mechanisms (as discussed below) to complement or supplement the role of the governing board in ensuring a CDFI is responsive to the needs of borrowers in its Target Market(s). CDFIs should be allowed to establish advisory boards if they wish to gain additional understanding and insights as to the credit and capital needs in its Target Market(s) but their ability to ensure an organization is complying with the accountability test is far more limited than that of a governing board.

As to what percentage of a CDFI's board members are needed to satisfy accountability rules, we agree with the comments of the CDFI Coalition's Memorandum to Director Donovan[4], which urge the CDFI Fund to adopt the approach applied to the certification of CDE applicants for both advisory and governing boards. 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.[5] 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][6].

2. *Is representation on an advisory board sufficient to demonstrate accountability?*

As we noted in Q #1 directly above, we do not view advisory boards as sufficient to demonstrate accountability. They may be used to augment the accountability provided by a CDFI's governing board but should not be relied on in and of themselves to ensure accountability.

3. *Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?*

Again as noted above, we believe governing boards should be the primary mechanism through which CDFIs demonstrate accountability to their Target Markets. That said, CDFIs should be accorded flexibility if they chose to augment or supplement this primary mechanism with other methods of maintaining accountability, especially if they have multiple Target Markets. As we explained in our comment letter on the CDFI Fund's Interim Rule[7], we

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[4] CDFI Coalition, pg. 9.

[5] 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."

[6] CDE Certification Board Table pdf, available on the CDFI Fund's websites at https://www.cdfifund.gov/programs-training/certification/cde/Pages/default.aspx .

[7] CRF, October 26, 2015.

were disappointed by the Fund's decision to eliminate the use of several accountability mechanisms including community meetings, focus groups, and customer surveys. This change significantly reduced the options available to CDFIs to strengthen their accountability resources.

We respectfully recommend that the Fund:

a) Reinstate the use of community meetings, focus groups, and customer surveys and work with the CDFI industry to address past shortcomings associated with these accountability mechanisms. We see great potential for all three of these methods given the rise of virtual communities and new channels for communication. These alternative mechanisms can be adapted for an online environment making it easier to gather information from participants anywhere in the country in real time. For example, the Federal Reserve Bank of Cleveland published a study of how small business owners view online alternative lenders and their credit products using online focus groups. These focus groups took the form of online discussions that allowed a geographically diverse group of small business owners to share their perceptions of online lenders and to evaluate mock loan products by visiting lenders' websites.[8] This study demonstrates how alternative accountability mechanisms adapted for an online environment are extremely well suited to capturing information that could help CDFIs demonstrate even *greater* accountability and responsiveness to small business owners in their Target Markets, particularly if those Target Markets encompass large geographic areas. In addition, online focus groups, community meetings, and/or surveys provide a direct connection to borrowers in their Target Markets.

b) Permit the use of alternative mechanisms. Specifically, we strongly urge the Fund to consider relying on a CDFI's SBA 7(a) lending designation as a means of assuring accountability to small business borrowers in eligible Investment Area census tracts. The federal SBA 7(a) program was established to serve borrowers that Congress determined lack access to affordable credit and capital on reasonable terms, and, in particular minorities, women and veterans. It is a nationwide program. By its very existence, the SBA 7(a) program is a federal policy conclusion that small businesses meeting its eligibility requirements and seeking loans of $5 million or less lack access to credit and capital nationwide. In fact, the 7(a) loan application requires SBA lenders to document the borrower's inability to obtain credit elsewhere. This SBA application requirement ensures that lenders remain accountable to the borrowers they serve by providing credit to small businesses that are unable to access capital from conventional financial institutions. An Urban Institute report commissioned in 2008 confirmed that lenders adhere to this provision.[9] While the SBA does not require 7(a)

[8] Alternative Lending through the Eyes of "Mom and Pop" Small Business Owners: Findings from Online Focus Groups, A Special Report of the Federal Reserve Bank of Cleveland by Barbara J. Lipman, Federal Reserve Board of Governors and Ann Marie Wiersch, Federal Reserve Bank of Cleveland, August 25, 2015, page 2.

[9] http://www.urban.org/research/publication/key-findings-evaluation-small-business-administrations-loan-and-investment-programs

loans be made in CDFI-eligible Investment Areas, CDFIs with a national SBA 7(a) license seeking to use this accountability method could be required to direct their lending activities to qualified Investment Areas. A similar approach could also be applied to CDFIs with a national 7(a) license that would like to use this product to serve a national OTP Target Market. The SBA has also demonstrated that people of color, women and veterans are more likely to obtain a loan through its 7(a) program than in the conventional market. A second 2008 Urban Institute analysis of the 7(a) program[10] supports the fact that 7(a) is reaching these particularly underserved borrowers. In addition, a 2013 Congressional Research Service analysis concludes that the program meets its goals.[11]

c) *Develop new accountability mechanisms harnessing innovations in data and data gathering techniques*. Dynamic changes in technology offer the opportunity to gather and analyze information about local credit conditions using new data sets available through online platforms. For example, using new data tools, such as google earth and google maps, it is possible to find an address, view a photo of a building thousands of miles away from a personal computer. Much more granular data is also available with the advent of big data. Policy Map includes a state level data set called *Longitudinal Employer Household Data* that allows users to profile small businesses by geography, by the percentage of low-income workers they employ, and whether or not have they have received small business loans. This data tool could help a CDFI determine if small firms located in eligible census tracts and employing low-income workers are having difficulty accessing credit. Armed with this knowledge, CDFIs could work directly with small businesses across the country to fulfill their credit needs with appropriate loan products.

Another example of how data is being used to address community development challenges is the Motor City Mapping project, a comprehensive analysis of all 380,217 parcels of land in the City of Detroit. This effort brought experts from Data Driven Detroit, a data intermediary that partners with socially-minded groups seeking data to drive decision-making, and Loveland Technologies, a private data mapping firm, together to create this survey of blighted buildings in Detroit to help city officials decide what to do about them. This information also informs CDFIs working in the city as they develop residential lending rehabilitation financing programs to repopulate and revitalize distressed neighborhoods.

The ability to collect and process large quantities of data using technology brings new efficiencies to the lending process as well as much deeper and more detailed understanding about the credit needs of borrowers. The Fund should encourage and collaborate with CDFIs in developing these new tools.

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[10] http://www.urban.org/research/publication/competitive-and-special-competitive-opportunity-gap-analysis-7a-and-504-programs

[11] http://www.fas.org/sgp/crs/misc/R41146.pdf

4. *Is a business plan and a stratified, statistically significant random sample of lending by asset class and location sufficient to document accountability? Under what circumstances?*

   We have no comment on this question.

5. *Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how?*

   No, accountability requirements should not vary based on CDFI type or Target Market. However, CDFIs should have a variety of tools available to meet this requirement and they should choose the tools best suited to their business model, the Target Market(s) they serve, and the Financial Products and/or Services they offer. Different communities and populations have different credit and capital needs. Accountability is essentially "market research" or determining what credit gaps exist in the market and how can a CDFI help borrowers overcome those gaps. There are many ways to assess the need or conduct market research, including soliciting public input through hearings and comment periods, but we believe data provides valuable insights in helping CDFIs determine and address community credit needs. The accountability requirements should encourage greater use of data by CDFIs in designing their financing activities and support services to ensure they are responsive to the credit needs of borrowers in their Target Markets.

6. *How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (e.g., small businesses, micro businesses, and affordable housing developers, charter schools), but whose "end-beneficiaries" are?*

   As a CDFI with a national LITP Target Market, we face this question with regard to both our multifamily affordable housing and small business lending activities. In practice, many CDFIs serving a national LITP Target Market qualify or verify the accountability of their loans by looking through to the "end 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" using proxies, such as the number of students receiving free or reduced lunches or the number of Medicaid patients, to verify the financing is serving low-income people. However none of these practices have been approved or blessed by the Fund in regulation or guidance.

   The situation becomes more complicated when applied to small business lending activities as "end beneficiaries" are not as easily identified or defined. 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. The absence of CDFI Fund guidance on how to verify that these loans are serving LITP "end beneficiaries" means each CDFI has developed its own approach and metrics for qualifying their small business loans. This situation has led to debate within the industry as to whether certain metrics for qualifying loans promote policies that are contrary to the goals of CDFIs. For instance, some question whether qualifying loans to small businesses creating or retaining jobs for low-income people indirectly promotes lending to firms offering lower wage employment opportunities rather than higher paying positions that help individuals or families build assets, raise their standard of living and quality of life. CRF has grappled with this issue as we aspire to fund businesses that create living wage jobs. However, we see the benefits of supporting firms offering what we refer to as "job ladders" or positions that are accessible to low-income people and allow employees to advance to higher paying, more responsible positons within the business. Our approach has been to undertake a detailed analysis of the businesses we finance by the industry code and job classification to determine if these firms offer workers an "opportunity ladder" to advance professionally and build wealth.

We have asked the CDFI Fund to provide guidance on this issue in two previous comment letters.[12] The absence of uniform industry standards for CDFIs means these organizations run the risk of unintentional non-compliance. We recommend that the Fund develop specific protocols for verifying different types of loans or investments based on the nature of the borrower/project and the "end beneficiaries". CDFIs should be permitted to use various proxies to automatically qualify their loans to easily demonstrate accountability to their Targeted Population (TP) Target Markets. For example, financing an affordable housing project developed with the LIHTC, a charter school serving children eligible for free or reduced lunches, or a community health center whose patients receive Medicaid, should qualify as loans or investments to eligible TP Target Markets. The Fund should seek comment from the CDFI industry and interested stakeholders on the specific proxies to be used when qualifying financing activities that support "end beneficiaries". The list of proxies should be regularly updated as CDFIs are continually finding new ways to serve "end beneficiaries

Given the complexities associated with vetting the accountability of small business loans, 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. It may be difficult to qualify all small business loans using a single methodology or measure, we recommend that CDFIs be allowed to demonstrate accountability to small business "end 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 beneficiaries" as well. We welcome the opportunity to work with Fund staff as they develop this important guidance.

[12] See CRF's Comment Letters on the CDFI Fund's Interim Rule implementing the CDFI Fund Program, October 26, 2015 and its Annual Certification and Data Collection Report Form, September 8, 2014.

7. *How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? In this context, how should the term "local" be defined?*

CRF *firmly believes* a national Investment Area Target Market is essential to the future of the CDFI industry. As a national, non-profit financial institution and certified CDFI, with a national SBA 7(a) license, we have a unique perspective on this question. During the past six years, we have found ourselves faced with the challenge of turning away worthy borrowers simply because they fall outside of our existing set of Target Markets. This also places financial constraints on our overall capacity to carry out our mission. We applaud the Fund raising this crucial question and we urge staff to work with industry participants, like CRF, to craft a national accountability mechanism that allows CDFIs to help the millions of small business borrowers whose *only* other credit source may be an online or marketplace lender offering predatory or inappropriate loan products that will ultimately harm their business.

As we described in question #3, there are a number of other ways a CDFI could demonstrate accountability to a national Target Market composed of Investment Areas. The Fund could utilize a designation from an established and proven federal program, such as the SBS 7(a), to serve as a proxy or means of verifying that a CDFI is accountable to the credit needs of borrowers in a national IA Target Market. It should be noted that with the exponential growth of marketplace and online lenders the small business credit market in this country has become, for all intents and purposes, a national market. Using the SBA 7(a) designation as an accountability mechanism would simply level the playing field for CDFIs rather than continuing to put them at a competitive disadvantage vis a vis these platform lenders.

The CDFI Fund could also reinstate accountability methods, like focus groups, including online groups, community meetings, and customer surveys, with guidance as to how they could be utilized at a national level to demonstrate a CDFI is satisfying the accountability test. As noted above, these methods could be adapted for an online environment and implemented or delivered to a virtual community that is national in scope.

As noted above, there is a tremendous opportunity to harness innovations in data and data gathering techniques. New technology tools exist, never envisioned when the Fund was first established, that make it possible to collect and analyze vast quantities of highly granular data in real time. Online and marketplace lenders are using this data to reach borrowers CDFIs will never be able to reach if we rely on existing channels and methods.
As to the question of having local accountability to supplement a national governing or advisory board, in our view this should not be a requirement but rather should be up to the CDFI how they choose to serve and remain accountable to their Target Market(s). If a CDFI wishes to supplement its knowledge of its Target Market(s) with other forms of accountability such an advisory board, focus groups, or customer surveys, they should be able to do so and to determine how they wish to define the term "local" for the purpose of this additional form of accountability.

8. *How should an Applicant that utilizes a web-based lending platform, especially one that serves a national Target Market, demonstrate accountability?*

   Applicants using a web-based lending platform should be afforded the same mechanisms for demonstrating accountability as other Applicants. They should be able to utilize governing and/or advisory boards, as well as the other accountability tools we proposed the Fund should adopt in Q #3 above. In addition, web-based Applicants may create new approaches to demonstrating Target Market accountability and the Fund should remain open to reviewing and updating CDFI certification criteria to incorporate new mechanisms. For example, CRF designed and implemented a survey in collaboration with a group of nonprofit community lenders and business advisory service providers to better understand the needs of small businesses in Baltimore. We launched the survey and collected responses through an online tool we developed known as Connect2Capital. The responses were used to inform the development of new financing products and support services for entrepreneurs and small businesses in Baltimore City, a community struggling with high poverty and social unrest. Web-based platforms can gather or analyze the credit needs of low-income communities and underserved borrowers in a far more efficient and objective fashion by tapping a host of new data sources available through online resources such as Policy Map, the Motor City Mapping project, as well as municipal websites, like the City of Chicago's Data Portal, that offer information on a wide variety of economic and community development activities at the local level. The growth of civic data resources such as the Civic Data Design Lab at MIT also offers a wealth of information and potential for collaboration with new partners CDFIs never dreamed of when the Fund was first created. Our expectation is that web-based platforms will have the expertise, talent and technology to pioneer new ways of demonstrating accountability by developing and delivering credit products well suited to the needs of borrowers, especially those serving a national Target Market.

<u>Non-Governmental Entity</u>
By statute, a CDFI Shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. In the CDFI Certification application, the Applicant must respond to a series of questions designed to surface/discover issues or circumstances that may prevent an Applicant from meeting this criteria.

1. *Are the current standards for establishing that an Applicant is not owned or controlled by a governmental entity sufficient?*

   The current standards for establishing that an Applicant is not owned or controlled by a governmental entity appear to be sufficient for the purposes of the Non-Governmental Entity test.

2. *Are there additional or alternative questions and/or documentation the CDFI Fund should require to determine if an Applicant is an agency or instrumentality of a Federal, State or local government?*

   Not at this time.

Certification Policy and Procedures

A. *Should the CDFI Fund request information on the reason for applying for certification and intended use (e.g., funding requirement, marketing)?*

   It is not clear to us why the CDFI Fund would seek this information and whether an Applicant would be able or willing to provide a response to this question. What might be more useful would be for the Fund to conduct a survey of CDFIs as to what they find beneficial about CDFI certification. If anonymity was preserved, respondents might be willing to respond candidly. This information might also inform the Fund's planning and resource allocation decisions.

B. *Are there additional sources of data collected by other federal agencies that can be used to meet any of the seven certification tests? If so, please describe.*

   As CDFI have become active participants in the SBA's 7(a) (both Community Advantage and to a lesser degree the full 7(a) program) data on the location, race, gender, ethnicity and former/current military status of borrowers using this program could be extremely helpful in better understanding the credit needs of these historically underserved small business owners. The comprehensive nature of the 7(a) loan application coupled with a large number of borrowers makes this a rich data source for analyzing the "non-bankable" small business credit market at a national level.

Additional CDFI Policy and Procedures Recommendations:
The CDFI Fund should create and implement a timely review process whereby the Fund responds to requests from CDFIs to modify or expand its Target Markets. The inability to respond to such requests puts CDFIs at risk of non-compliance with certification requirements and often limits their ability to compete and serve its customers. In some cases, a CDFI's inability to respond to market demand may drive borrowers to choose inappropriate or predatory loan products thus putting them in danger. Such an outcome is clearly not a desirable outcome for the CDFI Fund given its stated mission.

General Certification Questions for Public Comment

A. *"Community-based" is a term often used to describe CDFIs. How should "community-based" be defined and what does it mean for CDFIs to be "community- based"?*

No comment.

B. *Although not defined in statute, the CDFI Fund allows Applicants that serve Native communities to self-designate themselves as Native CDFIs and apply for Financial Assistance and Technical Assistance through the Native CDFI Program. Applicants that self-designate as a Native CDFI must attest to providing 50 percent or more of their products and services to Native lands or Native populations. Should the CDFI Fund continue to allow Applicants to self-designate as Native CDFIs or should there be more defined standards that the CDFI Fund should verify? If so, what should they be?*

No comment.

C. *Should CDFIs be allowed to be composed of multiple legal entities (Subsidiaries and/or Affiliates)? And if so, must a CDFI include all of its Subsidiaries and/or Affiliates for consideration?*

Yes, as the CDFI industry has matured and become more sophisticated, CDFIs' corporate structures have become more complex. For example, the April 10, 2015 Interim Rule amended the CDFI Fund certification regulations to permit a CDFI's Affiliate to rely on the Controlling CDFI's activity or track record in order to meet the financing entity requirement, solely for the purpose of the Affiliate participating as an Eligible CDFI under the CDFI Bond Guarantee Program. This is just one instance where having multiple legal entities including Affiliates or Subsidiaries helps a CDFI to access funding sources or meet other legal requirements.

D. *Should CDFI certification standards have more "bright-line" tests, i.e. specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?*

The CDFI Fund should maintain flexibility to evaluate Applicants using qualitative measures rather than relying on 'bright-line" tests such as thresholds and benchmarks that are more quantitative in nature.

E. *In addition to earlier questions regarding potentially different Primary Mission or Target Market standards based on institution type, are there other CDFI certification criteria standards that should vary based on institution type or the type of CDFI?*

None that come to mind.

F. *Should “start-up” entities be able to be certified? How should the term “start-up” be defined?*

No comment.

G. *Are there additional areas of CDFI certification policy or the CDFI certification application review process that could use improvement? If so, how?*

No comment.

Conclusion

CRF recognizes this request for information represents an enormous undertaking on the part of the CDFI Fund staff. We are grateful for this effort and appreciate the opportunity to share our views and recommendations on CDFI Certification policies and procedures. The CDFI brand continues to gain greater recognition in the market. It is critical that the certification framework remain fresh and relevant so CDFIs are able to achieve their full potential to bring economic growth and opportunity to the people and places they serve. The world into which CDFIs were born more than 20 years ago has changed immeasurably and the rules that inform CDFIs must not restrict their ability to lift up those outside the economic mainstream. We believe this review of CDFI certification will only serve to help both CDFIs and the CDFI Fund fulfill their respective missions. We stand ready to assist the Fund staff in whatever way we can!

Sincerely,

Frank Altman
President and CEO

LEVITICUS FUND

Faith Capital for Building Communities

Leviticus 25:23 Alternative Fund, Inc. 220 White Plains Road, Suite 125, Tarrytown, NY 10591 ▪ Voice 914.909.4381 ▪ Fax 914.606.9006

March 10, 2017

Mr. David Meyer
CCME Manager
CDFI Fund
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear David,

On behalf of the Leviticus Fund, I want to affirm the CDFI Fund's efforts to invite feedback from our industry's network on such a critical issue as policy changes within the certification process. Leviticus' first Executive Director, Br. George Schmitz, attended Pres. Bill Clinton's signing of the CDFI Act into law in 1994 and our Fund was part of the first cohort of CDFIs to be certified two years later.

The demand for innovation in accessing flexible capital from underserved communities throughout our nation has stretched our industry over the last two decades. Far more will be required as we assess current and anticipated future needs, and the CDFI community must remain responsive and nimble to those dynamic changes.

The following is offered for consideration as the CDFI Fund reviews possible changes to its certification policies:

• As a mid-sized CDFI with five FTEs managing over $32 million in capital, our concern is that changes to certification policies could result in more onerous reporting requirements. The AMIS site streamlines the annual certification reporting process, so any broader compliance reporting on products and services that would drain staff time should be seriously weighed against what actual value is added for the CDFI industry overall.

• In our opinion the current Threshold Target Market Test that requires a CDFI to demonstrate that at least 60% of its lending activities are directed to one or more of its eligible target markets ensures a predominant focus on an organization's primary market while allowing for exploration of new potential markets.

In response to inquiries regarding expanded reach, perhaps the CDFI Fund could consider an additional eligibility status that would recognize that an organization is in a more exploratory phase of market

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expansion during a defined period of time. At the end of that period, the CDFI could then apply for a modification to its target market if appropriate.

• There is a suggestion in the Request for Information that CDFIs might be required to provide a random, statistical sampling of lending transactions instead of the current self-reporting summary data. It would appear that the suggestion is connected to a Carsey Institute report that cited the limitations in not having standardized data upon which to draw industry-wide conclusions. While it is hard to judge the impact of the proposed change without more of the specifics on what data would be sought and how it would be reported, impact tracking is a strategic goal for Leviticus. We welcome the opportunity to increase our staff's capacity for data collection and analysis while contributing to higher standards of transparency for our sector.

• Regarding Development Services, a more detailed definition would ensure more consistency in what is being reported to the Fund. Possible definitions could include: (i) significant, independent feedback to management on an organization's overall financial health and development capacity; (ii) sharing management and governance best practices from high performing nonprofits; and (iii) connecting nonprofits to additional financial resources and community development expertise identified within a CDFI's network.

However we would not set as a requirement that DS be offered for each financial product and/or service because market demand should remain the driver of what services are offered within specific target markets.

• Regarding Accountability, Leviticus encourages the broadening of the current accountability standard beyond governing boards and advisory committees to allow for other mechanisms like focus groups and customer surveys. Leviticus operates within a unique governance structure in which our Member investors, who assume a higher level of risk on a subordinated basis, hold 25% of the director slots on our Board of Directors. Broadening the method for demonstrating accountability allows for continued compliance with our governance rules, while also providing essential market feedback on existing and future financial products.

Thank you again for this opportunity to offer our comments and suggestions.

Sincerely,

Greg Maher

Greg Maher
Executive Director

FHLBank San Francisco

March 10, 2017

David Meyer
Certification, Compliance Monitoring and Evaluation Manager
CDFI Fund
1500 Pennsylvania Avenue NW
Washington, DC 20220

Via email: cdfihelp@cdfi.treas.gov

Re: Notice and Request for Information (82 F.R. 2251)

Dear Mr. Meyer:

The Federal Home Loan Bank of San Francisco (Bank) appreciates this opportunity to comment on the policies and procedures of the Community Development Financial Institutions Fund (CDFI Fund) to certify an organization as a Community Development Financial Institution (CDFI).

Background

The Bank is one of 11 district Federal Home Loan Banks (FHLBanks) in the Federal Home Loan Bank System (FHLBank System) that was created by Congress pursuant to the Federal Home Loan Bank Act of 1932, as amended (FHLBank Act). The FHLBanks are government-sponsored enterprises of the United States and are organized and structured as cooperative, wholesale banks. The FHLBanks lend funds to their member institutions to help those institutions finance housing, economic development, infrastructure, and jobs. The FHLBanks help meet community credit needs by providing readily available and economical credit products and services to their member institutions through all phases of the economic cycle. FHLBank members include commercial banks, credit unions, industrial loan companies, savings institutions, insurance companies, and CDFIs. The Bank's members include these types of institutions headquartered in Arizona, California, and Nevada.

CDFIs became eligible for membership in the FHLBank System pursuant to Section 1206 of the Housing and Economic Recovery Act of 2008 (amending Section 4(a)(1) of the FHLBank Act (12 U.S.C. § 1424(a)(1)). The Federal Housing Finance Agency, the regulator of the FHLBanks, issued final regulations addressing CDFI membership on January 5, 2010, effective February 4, 2010. The regulations provide that non-federally insured, CDFI Fund-certified CDFIs are authorized to become members of the FHLBanks. As of December 31, 2016, 45 CDFIs have become members of the FHLB System, and six have become members of the Bank. Aggregate FHLB System loans or advances to CDFI members totaled approximately $122 million at the end of 2016. Although CDFI members are generally smaller than other institution types that are eligible for FHLBank membership, the mission and activities of CDFI members are closely aligned with the core mission and purpose of the FHLBank System.

The Bank has put a great deal of effort and resources into successfully engaging with CDFIs because of the close alignment between CDFI and FHLBank community and economic development missions. While tax credits, Community Reinvestment Act ratings, and other programs provide significant incentives for private investors in

CDFIs, the availability of private capital can be volatile. The Bank believes FHLBank membership can provide CDFI members with more reliable access to funding in all business cycles than other lenders and investors, enabling CDFIs to more effectively achieve their business and community development objectives. The FHLBank System benefits from CDFI membership through a broadening of support for the FHLBank System's affordable housing and community development activities. Because of the synergies provided by CDFI membership, the Bank supports a CDFI eligibility framework that is inclusive of the widest possible spectrum of financial entities with missions and activities that are focused on community development and the creation of affordable housing.

Specific Comments

<u>The Bank supports CDFI certification for community development entities that have local or national target markets</u>
The Bank supports the CDFI Fund's goals to "ensure that certification continues to foster a diversity of CDFI types, activities, and geographies" (82 F.R. 2251) and supports certification criteria changes that facilitate the certification of new entries into the marketplace and promote larger CDFIs to serve a broader set of communities. The Bank believes having a more diverse set of CDFIs would promote greater overall community development efforts and that access to FHLBank membership would promote greater financial stability among CDFI members. To this end, the Bank requests that the CDFI Fund consider certification for entities that have local or national target markets.

<u>The Financing Entity criteria should be as flexible as possible to support CDFI growth and reach</u>
Certification criteria that attract a broader range of community development-driven entities ultimately further the CDFI Fund's community development goals. The current housing financial system (e.g., banks, REITs, pension funds, housing associates, fintech companies, etc.) includes originate-to-sell participants that already serve Target Markets. The Bank believes that CDFI formations can effectively aggregate these loans with the possibility of using those loans to collateralize Bank advances and provide returns sufficient to attract private capital. The Bank believes loans to targeted communities can be expanded as these new sources of capital modestly leverage their investment in mortgage loans with access to Bank advances. In support of more diverse CDFI types obtaining CDFI certification, the Bank has the following comments on the various tests that are considered to determine whether an entity meets the Financing Entity criteria:

1. "Predominance" definition. In the Supplementary Information, the CDFI Fund states that it looks at an entity's financial statements and executed notes to determine whether the entity has a "predominance" of its assets dedicated to Financial Products, Development Services, and/or similar financing. (82 F.R. @ 2252) The Bank believes this practice may preclude mortgage banking, loan servicing, and other entities that are otherwise mission-driven organizations from seeking and obtaining CDFI certification, as these entities don't necessarily reflect their mission-related activities on their balance sheets. To further the CDFI's Fund's goal of fostering diverse CDFI types, the Bank suggests that any definition of "predominance" should consider the missions and activities of these other entity types.

2. "Similar financing activities" definition. Similarly, the Bank believes the CDFI Fund should define "similar financing activities" as broadly as possible. A broader definition will allow a wider range of community development-driven entities to consider and obtain CDFI certification. We continue to strongly believe that the field of eligibility for CDFI certification should be expanded to include as qualified activity certain loan purchases from non-CDFIs because the originate-to-sell segment of housing finance plays a pivotal role in the origination of home mortgage loans, and attach our prior comment on this issue.

3. The Bank believes that limiting the asset information to (a) "arms-length" loans receivables or equity investments or (b) loans purchased from CDFIs may not present an accurate assessment of an entity's commitment to community development activities. The Bank believes as long as the CDFI entity is meeting the Target Market test, non-CDFI activity and affiliate transactions should not be discounted. Disclosure regarding the broader range of financing activities, and how they augment community development, could be provided in the mission narrative.

<u>The Target Market test is sufficient</u>

The Target Market test is a relatively simple, reasonable, and well defined test that can be quantified and administered in a straightforward manner. The Bank believes extending the time period beyond one year, or differentiating between institution types, may unnecessarily complicate the test. The Bank does support the addition of Financial Services as a means for demonstrating Target Market service and suggests that Financial Services could be measured by applying the same 60 percent threshold for Financial Product activities to the amount of human resources that are providing the Financial Services to the Target Markets. The Bank suggests the CDFI Fund consider allowing entities to serve targeted populations wherever they reside (i.e., not limited to a specific geographic area), and if coverage is broad enough, further allowing entities to demonstrate that they serve a national Target Market.

In terms of accountability, the Bank believes the current guidelines adequately promote Target Market representation. When the Target Market is large or national in scope, representation may prove more difficult, but the governance surrounding the advisory board should mitigate concerns. The Bank believes CDFIs should be allowed to demonstrate accountability in many ways beyond governing or advisory board representation, such as through local surveys, focus groups, and executive staffing.

<u>Certification criteria should accommodate start-up CDFIs</u>

The Bank believes maintaining flexibility in the CDFI certification process will attract more mission-compliant entities and incent additional financial entities to increase their community development activities. In that spirit, the Bank requests that the CDFI Fund consider accommodating start-up CDFIs, particularly those with well established affiliates or parents that may already dedicate significant financial and human resources in serving Target Markets. The Bank believes these entities can be as effective in community and economic development activities as long-standing CDFI entities. As long as a start-up entity meets the Financing Entity and Target Market thresholds, the Bank believes the start-up should be able to receive CDFI certification.

We thank you very much for your consideration of our comments.

Sincerely,

Greg Seibly
President and Chief Executive Officer
Federal Home Loan Bank of San Francisco

FHLBank San Francisco

October 29, 2015

U.S. Department of the Treasury
Community Development Financial Institutions Fund
RIN 1505-AA92

Delivered via Federal e-Rulemaking Portal

RE: Comment on Community Development Financial Institutions Program - Interim rule with request for comment

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Interim Regulation on the Community Development Financial Institutions Program.

Since 1932, the Federal Home Loan Banks have served their mission of providing reliable liquidity supporting housing finance and community investment. During eight decades, the Federal Home Loan Banks have adapted to the evolutionary changes of a dynamic housing finance system and market. As the role of certain housing lenders has changed, and different types of institutions have assumed significance in housing finance, the Federal Home Loan Banks have moved to serve new institutions that become members and part of the Federal Home Loan Bank System's cooperative structure. The latest new category of members is the Community Development Financial Institution ("CDFI").

The Federal Home Loan Bank of San Francisco ("FHLBSF") and its members have a long and proud history of supporting community investment, implementing their own community investment program before the statutory mandates in FIRREA. The FHLBSF strongly believes in supporting member initiatives that transform and stabilize communities through increasing financing for affordable housing. The FHLBSF recognizes the importance of recruiting non-depository CDFIs to FHLBSF membership, the need for flexible housing finance, and the opportunity for CDFIs to play a significant role in the nation's housing finance system. To this end, the FHLBSF has been able to recruit 5 non-depository loan funds as CDFI members. But this is just a start, and the FHLBSF believes it can do much more to help the communities that need access to financing through CDFIs.

The FHLBSF believes the CDFI structure has the potential to be a much more significant bridge between sources of long-term private capital, such as pension funds and REITs, and loan originators that serve the borrowers who are the intended beneficiaries of the regulation. We believe that CDFI structures can be formed that hold home mortgage loans in portfolio, are funded primarily with advances from a Federal Home Loan Bank, and provide returns sufficient to attract private capital. By attracting such private capital, CDFIs will greatly expand lending to the communities that need assistance. It is our view that these home loans, which will be at market rates to borrowers in Targeted Populations and designated Investment Areas (borrowers who currently face the prospect of paying much higher rates on their home mortgages), can be gathered most effectively through the existing originate-to-sell segment of our current housing finance system. Our comments to the proposed interim rule are submitted in this spirit.

Although not expressly addressed in the preamble to the interim regulation, we believe the rulemaking process allows Treasury the opportunity to re-examine the eligibility criteria for CDFIs with an eye toward expanding the attractiveness of the CDFI Program for sources of private capital interested in membership in a Federal Home Loan Bank (as opposed to competing for monetary awards from the CDFI Fund). With the recommended change described below, entirely consistent with the policies underlying the relevant law and regulations, it is our belief that new independent sources of capital would seek Treasury certification as a CDFI in order to modestly leverage their investment in home mortgage loans to Targeted Populations and in designated Investment Areas with the use of Federal Home Loan Bank advances. We believe that the market for loans to targeted communities could be vastly expanded if the regulation were amended to reflect the existing structures of how a significant number of loans are made in the existing market for home mortgage lending. The fundamental purpose of the Federal Home Loan Banks has been to encourage their members to make home mortgage loans by providing reliable liquidity, and this slight broadening of CDFI eligibility criteria could allow many more borrowers to get lower rate home mortgage loans.

In the current home mortgage loan marketplace, there is a large segment of the market that operates with a clear division between loan originators that do not intend to hold the mortgage loan, and loan purchasers that intend to hold the loans in portfolio. Typically, the loan purchasers enter into loan purchase agreements with independent originators specifying the purchaser's loan purchase guidelines, creating a direct financial incentive for the originators to make loans that satisfy those guidelines. Indeed, loan purchasers often offer a "rate lock" commitment for such loans pursuant to the terms of their loan purchase agreements, and offer a preliminary commitment to purchase those loans at a specified price, which in turn allows the originator to offer the consumer a "rate lock" commitment. Simply put, but for the loan purchase agreement, it is highly unlikely the originator would be willing to fund the loan, or even to offer the consumer a "rate lock" at application or any time prior to loan closing. We strongly believe that the field of eligibility for CDFI certification should be expanded to include such loan purchasers because they play a pivotal role in the origination of home mortgage loans. While the purchase of a fully seasoned loan portfolio of eligible loans provides only partial benefit to the Targeted Populations and designated Investment Areas, purchases of loans originated with an intent to sell provide a direct and immediate benefit to Targeted Populations and designated Investment Areas by immediately recycling funds and making more credit available to the intended beneficiaries.

Allowing loan purchasers that function using this business model to satisfy the eligibility requirements for CDFI certification could vastly increase the funds available to Targeted

Populations and designated Investment Areas because granting them CDFI status would allow a whole new class of entities the ability to apply for membership in a Federal Home Loan Bank, and to increase the pool of capital directed to the intended beneficiaries of the Community Development Banking and Financial Institutions Act of 1994. Currently, a straight investment in market rate home mortgage loans offers investors a return in the low single digits, a modest amount attractive to a limited number of sources of capital. However, an investment in those same mortgage loans, held in a CDFI modestly leveraged with advances from a Federal Home Loan Bank, can provide long term investors a steady return in the high single digits. It is the differential between those expected rates of return that can attract vast new pools of capital for lending to the people in communities intended to be helped by the regulation.

We respectfully urge the Department of the Treasury to consider an amendment to the Interim Regulations in the form of the attached Exhibit A.

Sincerely,

Dean Schultz
President and
Chief Executive Officer

Exhibit A
Amendment to CDFI Program Interim Rule
RIN 1505-AA92

Amendment to 12 C.F.R. **§ 1805.104 Definitions**

The definition for "*Financial Products*" shall be amended by adding at the end thereof:

> Financial Products also includes loans purchased from non-CDFI loan originators, but only to the extent (i) the non-CDFI loan originator had in place at the time of origination a loan purchase agreement with the entity seeking to demonstrate CDFI eligibility (or an Affiliate thereof) pursuant to which the entity seeking to demonstrate CDFI eligibility (or an Affiliate thereof) provided an industry standard rate lock commitment to the originator on such loan; or (ii) the entity seeking to demonstrate CDFI eligibility obtains ownership of such loans within 90 days after the date the loan was originated.

Explanation
Currently entities that purchase loans only get credit as engaging in a qualified activity for a Direct Financing Activity to the extent they purchase a loan from a CDFI-certified loan originator. The amendment would give loan purchases credit for two new categories of eligible loans.
One category would be for loans purchased within 90 days of the date the loan was originated. The purpose of this provision is to recognize that the sale of newly made loans is a major sector of the current loan market, and providing such loan purchasers an incentive to purchase loans made to Targeted Populations or in Designated Areas could quickly recycle funds and make more loans available to other borrowers. The second category would allow loans purchased after the 90 day limit had expired to be included in the definition, as long as when the loan was originated it was done so pursuant to a standard rate lock commitment issued by the entity seeking CDFI status (or an Affiliate thereof). This second category recognizes that while the vast majority of loan purchases in this market segment are transferred within 90 days, given the special challenges in lending to Targeted Populations and in Designated Areas, especially with smaller originators, completing loan purchase underwriting within the 90 day period can sometimes be difficult; a timely nexus to the original loan, however, is still required through the imposition of the rate lock requirement.

FIStrategies

Strengthening Banks. Advancing Communities.

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Ben Sones, Member
Holly R. Logue, Member

March 10, 2017

Via Email Only

Mr. David Meyer
Certification, Compliance Monitoring and Evaluation (CCME) Manager
CDFI Fund
cdfihelp@cdfi.treas.gov

Ms. Annie Donovan
Director
CDFI Fund
cdfihelp@cdfi.treas.gov

Re: Request for Information Regarding CDFI Certification Requirements

Dear Mr. Meyer and Ms. Donovan:

Financial Institution Strategies Group, LLC (FI Strategies) respectfully submits the following comments regarding the Notice and Request for Information published by the CDFI Fund in the Federal Register on January 9, 2017, regarding the current policies and procedures to certify an organization as a Community Development Financial Institution (CDFI).

FI Strategies currently represents approximately 50 CDFI banks and 40 depository institution holding companies committed to promoting community development in low-income and underserved communities. We appreciate the Fund's efforts to review the certification criteria and process in light of the evolving nature of the industry and the significance of CDFI certification with regard to Federal government programs and benefits.

Our comments below are organized in the same order and numbering format as that found in the Notice and Request for Information.

I. Certification Criteria

A. *Legal Entity*:

We do not see any need for a change with regard to the legal entity test.

B. *Primary Mission*:

1. For regulated entities, the board-approved documentation and narrative statement are sufficient to demonstrate an Applicant's primary mission. The required data regarding financial products, financial services, and Development Services further demonstrates the Applicant's commitment to promoting community development. Creating a "quantitative" or other more explicit definition of what it means to "promote community development" may serve to stifle innovation among CDFIs and/or limit the variety of institutions which qualify for CDFI certification. Encouragement of innovation and variety are distinctive hallmarks of the present certification process and should be preserved at all costs.

   While regulated institutions are subject to a number of regulatory requirements safeguarding against predatory products, non-regulated institutions are not subject to these same requirements. For non-regulated entities, it may be appropriate for the Fund to develop criteria (*e.g.*, disclosures, interest rates, fees, and collection procedures) for evaluating financial products.

2. We do not believe for-profit organizations should be subject to more stringent requirements for meeting the primary mission test than those applied to nonprofit organizations. Nonprofit organizations do not presumptively pursue a community development mission merely by virtue of their nonprofit status; indeed, an organization's tax status does not affect its primary mission or its impact. CDFI certification does not favor nonprofit organizations over for-profit organizations, and the primary mission test should be applied consistently.

3. Again, regulated institutions already adhere to stringent regulations which prohibit predatory lending. Unregulated institutions, however, may need to meet appropriate criteria to ensure their products are not predatory in nature.

   Regulated institutions are presently required to provide a Board-approved primary mission statement, certify that at least 60% of their financial products and services are directed to the Target Market, and provide Development Services in the Target Market. These requirements, when considered in conjunction with the regulatory protections applicable to regulated institutions, ensure that only institutions with a meaningful community development mission are certified.

4. Please see our comments to question 3 above.

5. We do not see a clear policy rationale for requiring Depository Institution Holding Companies seeking certification to provide documentation that their parent, subsidiaries, and affiliates collectively meet the primary mission test. For example, many Depository Institution Holding Companies have non-lending and/or special-purpose affiliates and subsidiaries, such as insurance agencies, entities created to manage and market foreclosed real estate, and affiliated title companies. Requiring each of these entities to adopt a board-approved primary mission statement is cumbersome and generally does not pertain to the applicant's provision of financial products in the Target Market.

   The requirement that the parent, subsidiaries, and affiliates collectively meet the primary mission test should either be discarded entirely or applied to all applicants. The singling out of Depository Institution Holding Companies in this regard does not promote fairness, nor does it rest on grounds of sound policy.

C. *Financing Entity:*

We believe the present policy of automatically deeming regulated financial institutions to have satisfied the financing entity criterion is sound and should be continued.

D. *Serves an Investment Area or Targeted Population:*

1. Threshold Target Market Test:

   a. We support the current standard requiring that 60% of a CDFI's Financial Product activities must be in a qualified Target Market. This ensures that the lion's share of an organization's products is directed to an underserved area and/or population.

      We also support the flexibility to provide an argument when an organization does not meet the 60% threshold in terms of either number or dollar amount. For example, it is not uncommon for an organization to have a greater number but smaller dollar volume of products in its designated Investment Area. Because Investment Areas tend to be underserved markets with low- to moderate-income populations, an organization may need to deploy a small number of higher-dollar loans outside of its Investment Area in order to sustain the organization's profitability and its continued viability within the Investment Area. This is particularly true of regulated financial institutions, which are subject to rigorous financial safety and soundness requirements. Thus, flexibility with regard to the 60% threshold serves a valuable purpose.

b. There should not be different thresholds for different types of institutions. Nevertheless, the flexibility to provide reasons for failing to meet an aspect of the 60% test, as discussed above, needs to be appropriately contextualized. In particular, the financial safety and soundness requirements applicable to regulated financial institutions create a need for greater flexibility in this regard.

c. We see no need to change the self-reported summary data submitted by Applicants. Each Applicant should certainly be encouraged to keep backup data to support the summary data reported in the event a question arises. The present practice of requiring applicants to explain how they verify that their financial products and services are directed to the Target Market effectively ensures that reported values are reliable.

d. With respect to insured depository institutions and depository institution holding companies, our practice is to demonstrate that 60% of the applicant's deposits come from the Target Market in order to meet the Financial Services test. In order to appropriately verify our data, we either geocode the address of every depositor or (for larger applicants) geocode a random, statistically significant sample of the depositor addresses. We would certainly welcome further clarification with regard to the provision of Financial Services and what activities can or should be included to meet this test.

e. We would suggest a longer period of time or alternative methods for meeting the 60% threshold test for Target Market activities. One or two large out-of-market loans or the seasonal timing of an outstanding portfolio can temporarily skew financial product numbers. A three-year total of financial product originations or an analysis of the entire outstanding portfolio would represent the true character of an Applicant's Target Market more effectively than a most recent fiscal year plus year-to-date lookback.

2. Investment Areas:

   a. We believe the current procedure for defining Investment Areas is generally effective; however, we suggest that CIMS3 be adjusted to combine geographic units comprised of census tracts and counties (a mapping limitation at present).

      We also suggest that CIMS3 be adjusted to allow an entire State to be selected if the State meets Investment Area criteria. For example, the States of New Mexico and Mississippi presently both have statewide poverty rates in excess of 20 percent. True statewide Investment Areas should be permitted in such circumstances.

b. The CDFI Fund should continue the practice of allowing contiguous geographic units that may include a small portion of units that individually do not qualify as Investment Areas. This permits a more cohesive plan by an organization to promote community development in a larger geographic area. Provided the overall demographics of the Investment Area meet the requisite criteria, we see no need to discontinue this practice.

3. Targeted Populations:

b. Applicants proposing to serve Targeted Populations should be approved to serve such Targeted Populations nationally, provided the accountability and other certification tests are met.

4. National Target Markets:

a. If a CDFI is approved to serve a Targeted Population, it should be permitted to serve a national service area, provided the accountability and other certification tests are met.

E. *Development Services:*

CDFIs should not be required to provide a Development Service for each and every financial product and service. Nor should a CDFI be required to offer each Development Service each year to maintain certification status. Just as each product is different, each customer is different, some requiring more support than others. The CDFI has established a general, non-exhaustive list of Development Services in connection with the Annual Certification and Data Collection Reporting, and we believe these are helpful.

Nevertheless, one of the most beneficial features of the Development Services requirement is the expansive nature of the term's definition. A CDFI may perform the "listed' Development Services, or it may have established innovative Development Services unique to its organization. Provided these services "promote community development and prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services," they qualify as Development Services.

For these reasons, the nature, frequency, and amount of Development Services is – and should remain – as unique to each organization as it is to each individual customer. Any attempt to "standardize" the

Development Services requirement will likely constitute a step backwards for CDFI certification.

F. *Accountability:*

1. We believe the current rule of thumb (30% of a CDFI's board members) is sufficient to ensure appropriate accountability. This percentage should not be different for the different types of boards. Nevertheless, we would recommend that the CDFI take a more flexible approach to accountability.

   In rural areas, for example, where many depository institutions have been in existence for over 100 years and are closely held by members of the local community, management and the board are often comprised of principal shareholders, bank employees, and family members. These individuals are not only themselves residents of the Investment Area but are usually local business owners as well, employing and providing goods and services to residents of the Investment Area, all in an effort to promote community development in their respective communities. These individuals recognize that "what's good for our community is good for our bank," resulting in a strong alignment between their interests and the interest of the Target Market; yet, the Fund's present rule *automatically* attributes some type of financial "conflict of interest" to these board members which precludes Target Market accountability on their part. This is baseless and overly restrictive. These board members should be deemed accountable to their Target Markets; barring this, the Fund should at a minimum provide an alternative methodology for supplementing board accountability in these instances.

   CIMS3 mapping limitations related to Investment Areas provide another example of the need for greater flexibility in the area of accountability. Because CIMS3 cannot accommodate counties and census tracts in the same map, an applicant often must define two or more Investment Area maps despite the fact that these multiple areas actually function as a single, cohesive market. In these situation, the applicant is technically required to demonstrate separate accountability for each and every Investment Area defined in CIMS3. In such situations, Applicants should be permitted to show an "overall" accountability to the entire Target Market (including all separate Investment Areas) without having to separately show that 30% of the applicant's board members are representative of each and every designated Investment Area.

2. Representation on an advisory board is sufficient to demonstrate accountability. Advisory Boards show an organization's commitment to promoting community development in a particular market by targeting local individuals with first-hand knowledge of a particular market's needs.

4. We do not understand how "a business plan and a stratified, statistically significant random sample of lending by asset class and location" would be sufficient to document accountability. We do not advocate such a change.

G. *Non-Governmental Entity:*

We do not recommend any changes to how the CDFI Fund currently screens applicants to ensure they are non-governmental entities.

II. Certification Policy and Procedures

A. We do not see the need to request information regarding the reason for applying for certification. Most CDFI certification applicants will have a variety of reasons for applying, which they may or may not be able to articulate clearly. The goal of the CDFI certification application is to ascertain, not why the applicant is applying, but whether the applicant meets the CDFI certification eligibility criteria.

III. General Certification Questions for Public Comment

A. The term "community-based" does not need to be precisely defined. Nevertheless, we would urge the Fund to keep this term in mind as a substantive requirement for CDFI certification. In particular, as web-based products and delivery channels increase, these products and delivery channels require greater scrutiny to ensure that the applicable financial institutions remain "community-based" in a meaningful sense.

B. We have no objection to the current practice of allowing Applicants that serve Native communities to self-designate as native CDFIs.

C. We believe all CDFIs should be held to the same standard regarding parents, subsidiaries, and affiliates. The requirement that the parent, subsidiaries, and affiliates collectively meet the primary mission test should be discarded entirely or otherwise should be applied to all applicants. The singling out of Depository Institution Holding Companies in this regard does not promote fairness, nor does it rest on grounds of sound policy.

D. Bright-line tests, such as the 60% threshold for Target Market purposes, serve an important role by providing certainty for many applicants. Nevertheless, we also believe the CDFI Fund should maintain flexibility to evaluate Applicants on a case-by-case basis when bright-line thresholds are not met. As discussed above, there are instances when falling below the 60% threshold for Target Market purposes should not preclude the granting of CDFI certification.

Providing bright-line tests coupled with options for case-by-case evaluation where such tests are not met results in a healthy balance between certainty and flexibility.

E. We do not think that CDFI certification criteria standards should vary based on institution type.

F. We do not believe "start-up" entities should be certified. A proven track record of financial soundness and fiscal responsibility is needed, and all CDFIs must demonstrate that they satisfy the seven criteria required for certification.

In conclusion, FI Strategies 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 Ben Sones, Member, at (601) 956-1962 or *bsones@fistrategies.net*, or Holly Logue, Member, at (601) 427-9122 or *hlogue@fistrategies.net*.

With kindest regards,

FINANCIAL INSTITUTION STRATEGIES GROUP, LLC

Ben Sones, Member

Holly Logue, Member

CDFI COALITION
WWW.CDFI.ORG

March 10, 2017

David Meyer
CCME Manager,
CDFI Fund,
1500 Pennsylvania Avenue NW.,
Washington, DC 20220

And by email to
cdfihelp@cdfi.treas.gov.

Dear David,

RE: Request for comments on CDFI Certification, Federal Register 2251, Vol. 82, No. 5, Monday, January 9, 2017

The CDFI Coalition is pleased to have the opportunity to comment on the Community Development Financial Institutions Fund Certification policies. 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. The rules and policies for becoming and maintaining CDFI status are critical to maintain the integrity of the CDFI field.

We offer the following comments on the questions posed in the CDFI Fund's request for public comment:

A. *Legal Entity:* To satisfy the legal entity test, the CDFI Fund requires evidence of an Applicant's incorporation/organization/establishment, such as IRS documentation, establishing documents filed with appropriate authorities or charter numbers for Insured Depository Institutions and Credit Unions at the time of certification application.

    1. The statute does not indicate how long an organization must be in existence to be considered a "person (other than an individual)." Should there be a minimum period of time an organization should be in existence before applying for CDFI certification? If so, how long? If not, why not?

We do not believe any particular time frame is relevant to becoming certified. CDFIs must show that they already have loans on their books. We believe that is sufficient. The maturity, experience and performance of a CDFI will be taken into account when/if it seeks a Financial or Technical Assistance award. We believe that is the right time to, in effect, judge the performance of the CDFIs.

2 Is there additional documentation, beyond an organization's establishing documents filed with State jurisdictions that should be accepted to demonstrate that an organization is a legal entity?

Yes***. We recommend that, for the purpose of the primary mission test, all CDFIs (not just banks and bank holding companies, as is currently required by the statute) demonstrate that their parent and affiliate organizations taken collectively are mission-focused; and that a more robust set of factors be reviewed in making the determination whether an organization exhibits sufficient attributes of being mission-driven to be certified as a CDFI. Does the applicant and its affiliates and subsidiaries together collectively demonstrate a primary mission of serving low income persons or carrying out their activities in CDFI- qualifying low income census tracts?***

The regulations require that <u>depository</u> CDFIs meet the tests for certification based on the entirety of their activities, including those of affiliates. This provision prevents mainstream insured depository institutions from obtaining certification for bank–affiliated community development entities. However, the converse is not true and the Fund has the authority to apply the same test to all applicants for certification.

Current policy allows organizations that have no particular mission focus to create subsidiaries or affiliates that can be certified as CDFIs under the current policies. Requiring that every applicant seeking certification be assessed taking mission elements of affiliates/subsidiaries into account is consistent with the policy reasons for the test for insured depository institutions. We recommend that, with respect to the primary mission test, all applicants for certification be required to meet the criteria currently applied to insured depository institutions.

B. *Primary Mission:* The statute states that a CDFI must have "a primary mission of promoting community development," but specifies few criteria for meeting that test. The CDFI Fund currently allows Applicants for certification to meet this test by providing board-approved organizational documents that demonstrate that the Applicant has a primary mission of promoting community development along with a narrative statement describing how the Applicant's mission is consistent with the CDFI Fund's and a brief description of Financial Products or Financial Services offered. Insured Credit Unions that have received a Low Income Designation from the National Credit Union Administration are deemed to have met this criterion by virtue of their designation.

1. Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate an Applicant's primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund provide a more explicit, possibly quantitative, definition of what it means to "promote community development" that Applicants would be required to meet? If so, what should be the definition

and what test should be applied? Are there criteria that the CDFI Fund should not consider and why?

We believe the board approved documentation should be supplemented. It is important that there be documentation that an organization has a mission of community and economic development as the Fund currently requires. However, such documentation while necessary should not be the sole determinant of whether an organization will have, or has carried out its community and economic development mission. We recommend that the Fund request each CDFI to self-identify materials it maintains that addresses factors to be considered or additional materials or data to be submitted regarding mission focus for first time applicants for certification as well as for CDFIs seeking recertification.

New applicants may or may not have an operating history that demonstrates a mission focus. Existing CDFIs across the sectors of banks, credit unions, loan funds and venture funds may adopt different means to carry out their mission of promoting community and economic development. At a minimum, the Fund should require CDFIs to provide a narrative of how their organization as a whole (where there are affiliates or subsidiaries) and the CDFI has or will carry out its community and economic development mission. For existing CDFIs, the Fund could require a narrative covering both the period since certification was last obtained and whether any changes are proposed for the 3 year period for which re-certification is requested.

2. Should there be different standards for meeting the primary mission test for nonprofit versus for-profit organizations, particularly for-profits that are not Insured Depository Institutions? ```````` If so, what different standards should be applied?
No. We believe that the primary mission test is one that should be met by mission-focused groups. That is, the distinction is not between for profit and non-profit, but whether the group in its entirety evidences a mission focus.

3. What evidence can the CDFI Fund use to confirm an Applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose actions do not demonstrate intent to create community development and/or are predatory in nature?
We suggest that there be different tests for existing, operating CDFIs and those that are newer or have only a few transactions. For CDFIs that have a significant track record of lending and/or financial services and/or development services, the CDFI should be required to describe how those activities, and the terms under which they are conducted, demonstrate a mission focus. Such a discussion should be sufficient to ascertain whether the organization engages in predatory type lending.

4. To what extent should the CDFI Fund evaluate the Financial Products and/or Financial Services offered by an Applicant to determine its ability to meet the primary mission test? What test would the CDFI Fund apply in any such evaluation of Financial Products and/or Financial Services?

Financial Products and Financial Services are continually evolving and are designed to meet the needs of their designated markets. Therefore the Fund should tread carefully in assessing Financial Products and Financial Services in the context of "primary mission." Having said that, we believe it is appropriate for the Fund to examine whether "payday lender" type products are being offered and such entities should not be certified, as discussed above.

5. Currently, by statute, Depository Institution Holding Companies wishing to be certified as CDFIs must provide documentation that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test. Should the CDFI Fund also make this a requirement for Non-Regulated CDFIs, for example, a Non-Regulated for-profit financial institution? Why or why not?

   Yes. However, the test should apply to non-regulated non-profit financial institutions as well. There is no policy reason why a Regulated Financial Institution should be subject to greater requirements than a Non-Regulated Financial Institution. The same reasons that a bank should not be able to create a CDFI would seem to apply to corporations generally, whether non-profit or for profit.

C. *Financing Entity:* Insured Depository Institutions and Credit Unions are deemed to automatically meet this criterion. Non-Regulated CDFIs must demonstrate that they engage in direct financial activity (e.g., the provision of Financial Products, Financial Services, and Development Services) as reflected on financial statements and executed notes, and must dedicate a predominance of their assets to Financial Products, Development Services, and/or similar financing.

1. The CDFI Fund does not currently define the term "predominance," but in practice accepts a plurality of assets as meeting this criterion. Should the term "predominance" be defined more specifically, and if so, how?

   Predominance should be defined as more than 50%.

2. Should entities that provide less than a plurality of financing activity ever be considered Financing Entities? If so, under what circumstances and is there a minimum level of activity that should be required?

   Yes, especially in the case of regulated financial institutions, they may meet the predominance test through Financial Services.

3. Currently, the amount of assets and staff time dedicated to financing activities are used to measure the level of a CDFI's financing activity. How else could a CDFI's level of financing activity be measured?

   We believe staff time and assets are the appropriate measures of the level of financing activities.

4. For Non-Regulated CDFIs, is the current "predominance of assets" test appropriate, or should alternatives or additional considerations be permitted?

   We believe that for Non-Regulated CDFIs, the predominance of assets test is appropriate.

5. Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI's financing activities?

   Yes. As discussed elsewhere, in addition to the CDFI itself being a financing entity, we believe mission-focused affiliates or subsidiaries should be counted as well.

6. Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities?

   Yes. So long as the CDFI itself also engages in and meets the test in its own right, the financing activities of a subsidiary or affiliate should also be counted.

7. Should an organization applying for CDFI certification be required to transact a minimum number or dollar amount of loan or equity investments to be considered a financing entity? Should the Applicant be required to have at least one or more years of loan or equity investment origination? If so, what should those rules be?

   We believe that one year of loan originations should be sufficient to demonstrate that a mission driven organization is capable of carrying out CDFI activities. A dollar threshold should not be used.

8. Should an organization that only services loans or Equity Investments or has very few transactions be considered a financing entity?

   No Response

9. Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status?

   No Response

10. Currently, non-arms-length transactions do not contribute to meeting the financing entity criteria. For example, transactions made with Subsidiaries and/or Affiliates are not considered to be arms-length transactions. Should some transactions with Affiliates be permissible as evidence of an organization being a financing entity? If so, which ones? How should an "arms-length transaction" be defined?

    No Response

11. Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not?

    We believe it undermines the Fund's and the industry's credibility if it becomes a government program that funds its own activities rather than third parties. The Fund should retain the general rule that CDFIs offer their financial products (and financial services- see below) to third parties with whom neither the CDFI nor any of its affiliates has a financial relationship.

Having said that, some related party transactions should be permissible. For example, some CDFIs make pre-development loans to affordable housing projects that an affiliate may later syndicate through the Low Income Housing Tax Credit Program, through which 98% or more of the ownership is transferred to third party investors. The Fund's guidance should be clear that such transactions are not regarded as transactions between related parties. On the other hand, if a CDFI or its affiliates will retain more than a de-minimums ownership interest, perhaps 5%, in a project, such loans or equity investments should be considered related party transactions, and should not be counted for purposes of satisfying the Financing Entity test.

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12. Current CDFI Program regulations use the term "similar financing activities" in its definition of the term "Financial Products." How should the CDFI Fund determine what is included in "similar financing activities?"
No Response

D. *Serves an Investment Area or Targeted Population:* Applicants for certification must identify the Investment Area(s) and/or Targeted Population(s) they intend to serve as their Target Market.

1. Threshold Target Market Test: Although no threshold level of service is indicated in the statute or regulation, current CDFI Fund policy requires that an organization must serve at least one eligible Target Market and must direct at least 60 percent of all of its Financial Product activities to one or more eligible Target Market to qualify for certification. In general, both the number and dollar amount of the organization's Financial Product activities should be at least 60 percent of all of its Financial Product activities in the most recent fiscal year. If an organization does not meet the 60 percent threshold in terms of number or dollar amount of transactions (but not both), the organization can provide an argument as to why the figure is less than 60 percent and the CDFI Fund reserves the right to accept or reject the explanation.

a. Is the current standard that 60 percent of a CDFI's Financial Product activities must be in qualified Target Markets the right standard? If not, what percentage of transactions should be in and/or to a qualified Target Market to demonstrate that an organization serves that Target Market and why?

60% ***in dollar amount and transaction volume is an acceptable standard. However, until or unless a CDFI can add all requested Target Markets, the 60% test is applied only to those activities in the approved Target Markets. Thus, a CDFI that is certified for a Low Income Targeted Population (LITP) nationwide cannot include, for purposes of meeting the 60% test, loans made to borrowers in qualified CDFI census tracts or to certain populations that are not also low income. The portfolio analysis needed for parsing what can be reported as CDFI activity consistent with the approved Target Markets is burdensome, and could put some CDFIs at risk of not meeting the 60% test even though they are in fact lending in CDFI-designated Target Markets.***

We recommend that CDFIs that have submitted modifications to their Target Markets to the CDFI Fund be able to include any activity in that modified market, even if the CDFI has not yet been approved for those specific markets. With respect to the 60% benchmark, we recommend that it be just that, a benchmark, not a hard and fast compliance requirement that puts certification at risk if not met.

b. Should there be different thresholds for different institution types (i.e., Insured Depository Institutions and Credit Unions, nonprofit loan funds, and venture capital funds)?
No Response

c. The CDFI Fund currently relies on self-reported summary data submitted by Applicants to demonstrate that they meet the Target Market threshold test. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?
The Fund should maintain the ability to do statistical sampling, and the Fund should test a percentage of all CDFIs annually.

d. The August 31, 2015 Interim CDFI Program Regulations added the provision of Financial Services as a means of demonstrating that an applicant serves a Target Market. However, the CDFI Fund does not currently have a method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured? If an Applicant requests credit for providing Financial Services, should there be a separate minimum level of Financial Products that must be provided by the Applicant?
No Response

e. The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this the appropriate time period to consider, or should a longer period of time be considered? If so, should the applicant be required to meet the threshold in each year of the test, for a time period, or should an average be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?
For certainty in being compliant, the 60% benchmark should be a rolling average over the one year period of a CDFI's designated fiscal year, not a specific point in time test.

2. Investment Areas: The statute requires that an Investment Area must meet at least one of the economic distress criteria (poverty rate greater than 20 percent; Median Family Income (MFI) at 80 percent or below specific MFI benchmarks; unemployment rate 1.5 times the national average) and has significant unmet needs for Financial Products and Services, or is wholly located within an Empowerment Zone or Enterprise Community.
   a. The CDFI Fund's current practice is to define Investment Areas that are composed of one or more units of geography that meet certain distress criteria. Units include but are not limited to counties, census tracts, and Indian Reservations. Should the CDFI Fund change this practice? If so, how?
   Census tracts should be the preferred unit of measure unless it is impractical, such as for Native or non-metropolitan areas.

b. Currently the CDFI Fund allows Investment Areas to be composed of a set of contiguous geographic units that may include a small portion of units that individually do not qualify as Investment Areas. Should the CDFI Fund continue this practice, or should all units within the Investment Area meet the Investment Area qualifications?

The regulations seem to contemplate very small, place-based lenders as a result of the contiguous census tracts requirement. Many CDFIs serve all the low income census tracts in a city or a region, but cannot do so in a straightforward way because of the regulations on contiguous census tracts. Also, as the CDFI movement has grown, there are a number of CDFIs that focus on particular types of borrowers (small business, micro business, and affordable housing developers, charter school lenders) that may be less connected to a particular geographic location.

In addition, with web-based lending platforms, CDFIs can theoretically serve much, if not all, of the nation and provide much more convenient service than through place-based offices. This is an issue for business lenders in particular. The housing or community facilities CDFI lenders are serving low income people as "end-beneficiaries", and they tend to follow a LITP path to their Target Market through which the Fund is willing to certify CDFIs with a national LITP Target Market.

However, if the CDFI is a business lender and wants to serve Investment Areas, the Fund has resisted certifying CDFIs for large numbers of states. To our knowledge, no CDFI serving Investment Areas has been certified for more than 20 states. In a lending environment where CDFIs are operating regionally, or even nationally, this policy retards growth.

The Fund should simply waive the contiguous census tract rule in its regulations to solve this problem until such time as the regulations can be amended to remove the requirement. The Fund should look to the CDE service area requirements as a model for CDFIs to serve Investment Areas.

3. Targeted Populations: Targeted Populations include Low Income Targeted Populations (LITP) and Other Targeted Populations (OTP) for a specific geographic unit. LITP, for a specified geographic unit, by statute includes individuals whose family income (adjusted for family size) is 80 percent of the area MFI (for metropolitan areas). LITP in non-Metropolitan Areas is the greater of 80 percent of the area MFI; or 80 percent of the statewide non-Metropolitan Area MFI. The CDFI Fund currently includes, for a specific geographic unit(s), African-Americans, Hispanics, Native Americans, Native Alaskans, Native Hawaiians, and Other Pacific Islanders among the groups automatically considered eligible for an OTP Target Market. Applicants are permitted to seek OTP recognition for other populations by demonstrating that the group lacks access to capital.

a. Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?

Yes, other federal programs that share community development goals similar to the CDFI Fund should be allowed to be considered Targeted Populations. The regulations do not develop the full potential of the statute, which states that a targeted population can be a

low income person or someone who "otherwise lacks adequate access to loans or equity investments."

The Fund's regulations and its guidance have limited the "otherwise lacks adequate access" language to African Americans and Hispanics and Native groups, and, on a case by case basis, other collections of individuals such as women, Asians and the like on a market specific basis.

The Fund's statutory language is broad enough to allow the Fund to include other populations that have been found to lack access to credit and capital by other federal agencies. For example, the SBA has established a Council on Underserved Communities to examine the obstacles for obtaining credit faced by small businesses.[1] In addition, the SBA has studied the fact that women, minorities generally, and persons with disabilities have a disproportionately harder time accessing credit and capital.

Taking a broader interpretation, the Fund could determine, for example, that persons with credit scores below a certain level, persons or businesses with combined assets below a certain amount, loans under a certain size, or years of operations are indicators that a borrower lacks access to credit and capital. The Fund could draw on research that demonstrates borrowers with certain attributes cannot obtain credit from traditional lenders. For example, lenders might agree that a FICO score below 550 would prevent a borrower from obtaining credit conventionally and could be considered a Targeted Population.

b. CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?

Yes, the Targeted Populations definition should be a national designation unless a CDFI specifically requests a smaller area.

4. National Target Markets: Currently, in order to be certified with a Target Market national in geographic scope, CDFIs need to show that they have conducted their financing activities broadly across the variously defined regions of the country, (e.g. Northeast, West, Midwest, South, Southeast, etc.)

   a. Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments?

   No, there should not be a minimum geographic dispersion of actual investments. CDFI financial products and financial services are not distinguishable on a regional or statewide basis and it will lead to cumbersome and time consuming modification requirements if CDFIs have to request a new market every time they go into a new area.

   b. Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these

[1] https://www.sba.gov/about-sba/sba-initiatives/council-underserved-communities-cuc

practices as constituting a national Target Market?
Unless a CDFI requests a more limited Target Market, all Target Markets should be national.

B. *Development Services:* A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. Development Services means activities undertaken by a CDFI, its Affiliate or contractor 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. For example, such activities include, but are not limited to, financial or credit counseling; homeownership counseling; and business planning and management assistance.

1. Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?

We believe that the current regulations that define Development Services as services that are "integral" is sufficient. That said, neither the statute nor the regulations explicitly state that there be a corresponding Development Service for each financial product.

As CDFIs have evolved, not all borrowers need the same type or level of development services for each and every loan product a CDFI offers. For example, not all developers who borrow funds for affordable housing need counseling on how to use the funds or run their businesses, and even more so if they are repeat borrowers.

The Fund's certification application tacitly recognizes this and does not ask applicants to describe how each loan product is accompanied by a corresponding Development Service. Instead, the excel workbook asks what development services are offered and the loan product to which it relates. The guidance states that an applicant must provide "at least one" development service.

We recommend that the Fund ask certification applicants whether development services are needed for the anticipated borrowers of their loan products, and if not, why not. The Fund should assess and ensure that Development Services are being offered for borrowers for whom Development Services are integral – that is, a particular form or type of development service is needed by the borrower to enable the borrower to successfully use the financial product, for example, new affordable housing developers, first time homebuyers, and most micro loan borrowers. In addition, applicants that offer financial counseling services, regardless of whether they are linked to a specific loan product, should be considered as offering Development Services.

2. Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service?

No. Please see discussion above. In addition, Fund guidance on Development Services is needed so that CDFIs whose borrowers do not need such services are not exposed to a compliance risk, while ensuring that Development Services are being offered to borrowers, investees or financial services customers who need them.

3. Should a certified CDFI be required to offer each Development Service each year to maintain certification status?
   No. Offering Development Services should depend on the borrower and the need for the services, not the frequency of offering Development Services.

F. *Accountability:* The CDFI Fund currently requires that a CDFI maintain accountability to its Target Market through representation on its governing board and/or advisory boards. Prior to recent changes in the regulation, a CDFI could demonstrate accountability through other mechanisms such as focus groups, community meeting, and/or customer surveys.

1. What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, i.e. governing vs. advisory boards?

   We recommend that the Fund take the same approach to qualifications of board members for accountability purposes in the CDFI certification process as it does in the certification process for Community Development Entities (CDEs) in the New Markets Tax Credit program. To be a certified CDE 20% of the governing or advisory board members must be accountable and can be accountable to larger geographic areas.

   We see no reason to differentiate Governing from Advisory Boards.

2. Is representation on an advisory board sufficient to demonstrate accountability?
   Yes. We believe advisory boards can be sufficient to demonstrate accountability.

3. Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?
   Comprehensive and current customer surveys, as well as well-constructed focus groups that document a need for the CDFI's products and services would seem to be legitimate accountability mechanisms.

4. Is a business plan and a stratified, statistically significant random sample of lending by asset class and location sufficient to document accountability? Under what circumstances?
   No Response

5. Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how?
   We see no reason to change the requirements based on the type of Target Market.

6. How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (e.g., small businesses, micro businesses, affordable housing developers and charter schools), but whose "end-beneficiaries" are?

   For compliance purposes, the Fund needs to develop guidelines for the types and levels of end beneficiaries that fulfill the accountability requirements. There needs to be clear guidance so

CDFIs know what they must do to remain certification-compliant if serving a Target Market through the end beneficiaries' path. It may be possible that certain types of projects could categorically be deemed to be serving low income end beneficiaries without documentation of the status of individuals. For example, any housing project which will have at least 20% of the units restricted to persons at or below 80% of AMI could qualify. Similar thresholds could be set for community facilities or other common "end-beneficiary" type projects. In addition, if CDFIs are serving low income persons through employment, there needs to be rules on how to assess them as end beneficiaries.

7. How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? In this context, how should the term "local" be defined?
   There should not be a requirement to have local accountability per se. Instead, rules similar to the NMTC requirements for CDEs should be used.

8. How should an Applicant that utilizes a web-based lending platform, especially one that serves a national Target Market, demonstrate accountability?
   Web-based lenders could demonstrate accountability by showing that they have board members that are familiar with web-based lending platforms and can offer advice on how best to serve web-based customers.

G. *Non-Governmental Entity:* By statute, a CDFI Shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. In the CDFI Certification application, the Applicant must respond to a series of questions designed to surface/discover issues or circumstances that may prevent an Applicant from meeting this criteria.

1. Are the current standards for establishing that an Applicant is not owned or controlled by a governmental entity sufficient?
   The standards should be reviewed with CDFIs that have a connection to a local, county or statewide agency to better ascertain where these lines should be drawn.

   Taking their contributions into account, the Fund should add questions to elicit further information on the relationship with governmental entities. Those questions should include whether the potential CDFI works closely with city, county or state agencies, whether the CDFI manages any of their loan funds, and whether any government official can veto the CDFI's loan decisions. They should also include an open-ended question that asks applicants to describe their relationships with city, county or state agencies and the extent to which the applicant coordinates its lending activities with such agencies.

2 Are there additional or alternative questions and/or documentation the CDFI Fund should require to determine if an Applicant is an agency or instrumentality of a Federal, State or local government?

See above.

II. Certification Policy and Procedures

A. Should the CDFI Fund request information on the reason for applying for certification and intended use (e.g., funding requirement, marketing)?

This question could be asked in the context of why the market the CDFI plans to serve needs a CDFI – are there insufficient competitors? Are desirable products and services being offered at the needed scale in the market?

B. Are there additional sources of data collected by other federal agencies that can be used to meet any of the seven certification tests? If so, please describe.

No Response.

III. General Certification Questions for Public Comment: Through this RFI, the CDFI Fund invites comments and responses to the following questions regarding CDFI certification:

A. "Community-based" is a term often used to describe CDFIs. How should "community-based" be defined and what does it mean for CDFIs to be "community- based?"

To the extent "community-based" requires a specific location; the term is out-moded. We think it could largely be replaced by ensuring that a CDFI has a primary mission of serving low income people or low income communities generally.

B. Although not defined in statute, the CDFI Fund allows Applicants that serve Native communities to self-designate themselves as Native CDFIs and apply for Financial Assistance and Technical Assistance through the Native CDFI Program. Applicants that self-designate as a Native CDFI must attest to providing 50 percent or more of their products and services to Native lands or Native populations. Should the CDFI Fund continue to allow Applicants to self-designate as Native CDFIs or should there be more defined standards that the CDFI Fund should verify? If so, what should they be?

The CDFI Coalition defers to the Native CDFI community on this question.

C. Should CDFIs be allowed to be composed of multiple legal entities (Subsidiaries and/or Affiliates)? And if so, must a CDFI include all of its Subsidiaries and/or Affiliates for consideration?

Yes, given the nature of various legal structures in use currently, the Coalition believes that a CDFI should be able to include mission focused subsidiaries and affiliates in reporting their financial results and impacts. In addition, in considering an entity for certification, it must demonstrate that parent, subsidiary and affiliate organizations are all mission-focused.

D. Should CDFI certification standards have more "bright-line" tests, i.e. specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?

The evaluation of an applicant ought to be able to take subjective factors into account and

not be limited to bright line tests.

E. In addition to earlier questions regarding potentially different Primary Mission or Target Market standards based on institution type, are there other CDFI certification criteria standards that should vary based on institution type or the type of CDFI?
No Response

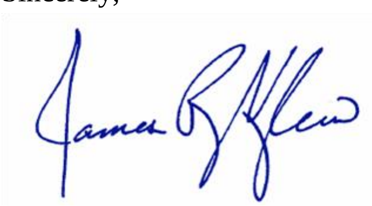
F. Should "start-up" entities be able to be certified? How should the term "start-up" be defined?
No Response

G. Are there additional areas of CDFI certification policy or the CDFI certification application review process that could use improvement? If so, how?
No Response

<u>Engagement with the CDFIs</u>
Echoing our recommendation with respect to other comment letters, we recommend that the CDFI Fund set up a process that allows for interaction between the CDFI Fund staff and the range of types of CDFIs to better understand the nuances of how certification policies affect each of them. We found the session the CDFI Fund conducted with industry representatives with respect to the annual CDFI report form to be very helpful as a means to discuss and clarify important issues.

We look forward to answering any of your questions.

Sincerely,



James R. Klein
CDFI Coalition Chair
On behalf of the CDFI Coalition

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March 9, 2017

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

Mr. David Meyer
Certification, Compliance Monitoring and Evaluation Manager
Community Development Financial Institutions Fund
US Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Response to Request for Information in CDFI Certification Requirements

Dear Director Donovan and Mr. Meyer:

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments on the Notice and Request for Information published by the CDFI Fund in the Federal Register on January 9, 2017. As stated, the CDFI Fund is seeking comment on its current policies and procedures for certifying Community Development Financial Institutions (CDFIs).

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 135 banks and 83 bank holding companies with the Treasury's Community Development Financial Institutions (CDFIs) designation. CDBA membership comprises 65% of the total assets of the CDFI bank sector and more than a majority of all CDFI banks.

CDFI banks strongly support the efforts of the Community Development Financial Institutions Fund (CDFI Fund) to promote investments in low income and underserved communities. We appreciate the opportunity to provide feedback to maximize the effectiveness of all programs for the benefit of the most underserved communities in the nation.

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

1. **Legal Entity:**

In the case of Insured Depository Institutions, we recommend no changes to the current standards for establishing that an organization is a Legal Entity.

2. **Primary Mission Test**

Barring Predatory Actors: In recent years, significant concerns have surfaced about the predatory nature of consumer and small business products offered by entities that often target low income, unbanked, underbanked or other vulnerable populations. CDFI banks and credit unions are subject to numerous regulations by their primary regulators and the Consumer Financial Protection Bureau (CFPB) that safeguard against offering predatory or inappropriate consumer products. Among regulated CDFIs, these safeguards are effective in ensuring predatory products are not offered. Thus, we believe there is no need to change the current standard for demonstrating "a primary mission of promoting community development" for regulated CDFIs.

Predatory products are most prevalent among nonregulated entities targeting consumer and small business customers. Thus, CDBA recommends the CDFI Fund develop a set of criteria to evaluate Financial Product alignment with the Primary Mission test (e.g. APR, fees, structure, collection procedures) for nonregulated entities offering these products. As a minimum benchmark, the CDFI Fund could use standards set forth by the CFPB for similar products. For example, an entity offering small dollar loan products that meets the CFPB definition of a "covered"[1] loan should not be eligible for CDFI certification. The CDFI Fund's purpose is to build distressed communities and underserved populations. Thus, it should retain the authority to reject an applicant for certification if it believes their products and services do not align with the Primary Mission test because they are not sufficiently transparent or could be harmful to consumers.

Tax Status: CDBA strongly objects to setting different certification requirements based on the tax status. Tax status is not a screen for "mission purity." When Congress created the CDFI Fund in 1994, the authorizing statute makes no distinctions that would allow the CDFI Fund to apply a different set of eligibility requirements on the basis of tax status. In fact, the legislative history is abundantly clear that for-profit CDFIs were seen as a key part of the sector and were intended receive support from the new CDFI Program. Making it harder for for-profit entities to become certified only deepens and institutionalizes the CDFI Fund's bias toward funding 501(c)(3) nonprofit CDFIs at the expense of other CDFI types.

The largest group of for-profit CDFIs are regulated banks and thrifts. The average size of a CDFI bank is $341 million – significantly larger than the vast majority of nonprofit CDFIs and possessing greater capacity to delivery capital and create impact at scale. At 12/31/2016, 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

CDFI bank sector reported $32.2 billion in loans outstanding. By comparison, the nonregulated CDFI sector (which is mostly nonprofit) has only $14.3 billion in total assets.

If the CDFI Fund is concerned for-profit entities offering predatory products may seek certification – they should focus on the products – not the tax status of the provider. As discussed above, CDBA strongly recommends that the CDFI Fund focus developing a methodology for screening out applicants that offer harmful products – rather than penalizing good CDFIs that are committed to serving their communities just because they are for-profits.

Intentionality: Since the CDFI Program regulations were first published in 1996, the CDFI Fund and industry have struggled with the concept of how to measure intent and how to know if an entity is truly mission focused." As a practical matter, it is not realistic for the CDFI Fund to look into the "hearts and minds" of every CDFI's management team and/or Board of Directors to subjectively assess the "purity" of their motivations.

CDBA believes the CDFI Fund should continue to focus on what an entity does and whom or where it serves -- as intended by Congress. Setting a subjective screening criteria based on perceived "intentionally" will likely have the unintended consequence of preventing some truly deserving and needy communities from being able to benefit from access to CDFI Fund resources. As noted above, CDBA believes that tax status should NOT be used as a proxy for "mission purity" or "intentionality." Over 20 years, the CDFI Fund has significant evidence of highly impactful and mission oriented CDFIs that are for-profit entities.

3. **Financing Entity Test**

CDBA believes that the current standard for meeting the financing entity test should remain the same for regulated CDFI banks and credit unions. Currently, regulated CDFIs automatically meet the Financing Entity requirements. With regard to nonregulated CDFIs, CDBA will defer to the recommendations of trade associations whose membership principally consists of such entities on the appropriate Financing Entity standards.

4. **Target Market Test**

Minimum Threshold: CDBA opposes increasing the minimum level of targeting for certification. All CDFIs must balance a double bottom line between mission and sustainability. Mission is core to a CDFI's purpose and most CDFIs exceed the 60% threshold (most 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. Those transactions and customers, however, are important because they help support the CDFI's mission when they generate income. To be sustainable, CDFIs must generate income from a variety of sources.

Federal policy makers first formally recognized CDFIs more than 20 years ago. Yet, regulated CDFI banks and credit unions still encounter examiners that remain skeptical about community development lending and believe predominantly serving low income communities may compromise the financial integrity of the institution. Prior to publishing the first set of CDFI Program regulations in 1995, the CDFI Fund staff consulted extensively with the CDFI industry and Federal banking and credit union regulatory agencies to determine the right balance. After much deliberation, a consensus emerged around the 60% threshold. If the CDFI Fund's targeting requirements were increased, it would likely raise "red flags" with the regulatory agencies. Examiner pressure could make it more difficult for even the most mission focused CDFI banks and credit unions to remain certified. Instead of raising the threshold for certification, we suggest that setting a high bar on deployment of Federal money to Target Markets is appropriate.

<u>Threshold by CDFI Type</u>: Regardless of CDFI type, CDBA opposes increasing the minimum level of targeting for certification. Regulated CDFI banks and credit unions receive significant regulatory scrutiny around earnings, capital, risk, and other matters. Unlike nonregulated CDFIs, however, regulated CDFIs have little or no access to grant or philanthropic resources (except the CDFI Fund) to fill gaps or mitigate risk. As noted above, while most regulated CDFIs exceed the 60% threshold, raising the minimum threshold above its current levels will likely create unneeded and unproductive additional scrutiny from "safety and soundness" examiners. Nonregulated nonprofit CDFIs have access to philanthropic resources, perhaps they could be held to a higher targeting standard. But, in the interests of fairness, CDBA recommends that all CDFIs be held to a consistent set of targeting standards at the current 60%.

<u>Verifying Data</u>: The annual certification report asks CDFIs to self-report summary data that demonstrates at least 60% of their total lending meets the Target Market test. CDBA does not believe it is necessary to require all CDFIs to submit documentation to support the summary data. A less burdensome alternative would be to require CDFIs to maintain an internal list of all transactions by number and dollar amount. The CDFI Fund should preserve the right to request the list and only request transaction documentation where it is concerned about the validity of data submitted. We do not believe statistical sampling of loans is a good option. This process will be costly and burdensome to both CDFI banks and the CDFI Fund with little likely difference in the outcome on a certification decision.

<u>Financial Services</u>: CDBA recommends the CDFI Fund remain flexible on the type of evidence or proxies that a CDFI can provide to demonstrate how financial services serve a Target Market(s). Nearly all CDFI banks and credit unions provide basic retail financial services to customers. Financial services include a diverse range of offerings, including checking and savings accounts, credit cards, debit cards, prepaid cards, safe deposit boxes, certificates of deposit, money market accounts, and investment management services. In the case of business customers, the offerings may include cash management, payment systems, merchant card processing, payroll services, lock box services, and others. Services may be provided at a branch office, online, or through a mobile device.

To meet the Financial Service reporting requirements, the CDFI Fund currently requires that deposit accounts be geocoded and the aggregate dollar amount of deposits reported. Given that residents of low-income communities often have lower account balances, the number of accounts should be considered as well. As the financial services landscape rapidly changes, the CDFI Fund should remain open to a variety of methodologies and proxies for demonstrating how financial services serve a Target Market(s) beyond simple geocoding or collecting income data. Given the variety and complexity of financial services offered by depository CDFIs, it is impossible to proscribe a single methodology for the Target Market test. The policies governing certification should explicitly state that CDFIs can present alternative methodologies or proxies that can be accepted in lieu of geo-coding or collection of income data. Examples:

- Some prepaid vendors can provide data on the business where a debit card is used;
- Some debit card products can access government benefits; thus, program eligibility requirements could be used as a proxy for customer income data; and
- Most banks track the branch office in which a customer account is opened and the branch address can be geocoded.

Finally, we recommend the CDFI Fund consider eliminating the requirement for regulated CDFIs to submit deposit or other financial service data if they comfortably meet the 60% test based on lending activity only. Consideration of financial service data could be offered an option if a bank or credit union needs to supplement its lending data in order to meet the 60% test. As noted above, most CDFIs are well above the 60% Target Market test. Thus, requiring submission of geocoded deposit data appears to add little or nothing to most certification decisions but adds significant costs to the CDFI.

Emerging Products: Over the 20 years, since the CDFI Fund began certifying CDFIs, technology has sparked fundamental changes in the financial services landscape. On one hand, 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 creation of a new category of “emerging products” that can qualify toward meeting the Target Market test requirements if they promote financial inclusion. The CFPB’s Project Catalyst provides a framework for evaluating products and services that may be useful to CDFI Fund. Interested CDFIs should be able to apply to the CDFI Fund for an “emerging products” exception to the Target Market test. The CDFI Fund should review each product to ensure it is appropriately structured and not harmful to customers. Approved “emerging product” pilots should be given flexibility on the collection of income data and Investment Area restrictions and required to report to the CDFI Fund on how the product meets the financial inclusion goals.

Time Period: The Target Market Test is currently based on lending activity that occurred during an applicant’s last fiscal year and year-to-date lending. Using such short-term data is highly problematic. Demand ebbs-and-flows in most markets; thus, evaluating only originations over less-than-a-two year period will not reflect the full scope of a CDFI’s activities. We recommend using: (1) three full fiscal years of annual originations; and (2) data from a CDFI's outstanding portfolio. As the CDFI Fund has adopted an annual certification process, it should use annual origination data previously submitted rather than requiring resubmission of the same data.

Investment Area: The CDFI Fund's current process for defining geographic units that collectively meet the Investment Area distress criteria works. The CDFI Fund's provision that allows Investment Areas to be composed of a set of contiguous geographic units that may include a small portion of units that do not individually qualify as Investment Areas, is appropriate and consistent with how CDFI operate in their local markets. CDBA recommends no change to current policy. The CDFI Fund's online mapping system, however, has technical limitations that prevent the aggregation of census tract and county level Investment Areas. CDBA recommends that these technical glitches be corrected.

Target Populations: Over the past 20 years, technology has radically changed how many 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. The recent influx of nonregulated FinTech companies is also changing how customers access consumer and small business loans. CDBA recommends updating the Target Market framework to reflect the evolution in the financial services sector. Increasingly CDFIs will likely be serving a mix of geographic areas and Target Populations.

Our nation needs both strong local communities and an inclusive financial service sector that is fair, serves everyone, and provides opportunity. A revised Target Population policy should incorporate a focus on financial inclusion. In the case of many technology-driven financial products and services, obtaining customer income data to ensure they meet the "80% of less of median family income" standard may not be feasible.

The CDFI Fund will need to work with practitioners to develop an alternative set of proxies or methodologies for measuring financial inclusion and service to low income, unbanked, underbanked, and other vulnerable populations in lieu of the current 80% of area median income methodology. For example, several CDFI banks have launched technology-driven consumer products (i.e. debt cards, online small dollar loans) intended to provide un-banked and under-banked customers with access to responsible products. These products are accessible and benefit customers that might otherwise not be served -- or fairly served. Yet, if a portion of the customers live outside of the bank's current Investment Area(s), they may eventually detract from a bank's ability to meet the Target Market test if demand for the products grows. The CDFI Fund should encourage, not discourage, product innovation that promotes financial inclusion. To this end, the CDFI Fund should allow CDFIs serving Target Populations to serve such customers without regard to location – including a national market.

Other Targeted Populations: CDBA recommends that all race and ethnicity based Target Populations be treated equally provided the applicant can demonstrate that the Other Target

Population it serves faces significant challenges with access to capital, financial inclusion, or economic opportunity.

National Target Market: As noted above, if a CDFI is approved to serve a Target Population, they should be permitted to serve a national service area. Recognizing that it is unlikely that any CDFI will be able to complete transactions in every state, it is impractical to set minimum threshold for geographic dispersion of transactions. In fact, such thresholds could serve as a barrier to a CDFI reaching into new geographic regions without risking their certification – or creating unnecessary administrative burden for the CDFI and the CDFI Fund to process amendments to a certification.

5. Development Services

CDBA is strongly opposed to: (1) requiring CDFIs to provide a corresponding Development Services for each Financial Product and Service; and (2) requiring CDFIs to offer each Development Service each year to maintain certification status. Every customer is different. Some customers require support from a CDFI – but others do not. The definition of Development Services should remain highly flexible. The nature, frequency and amount of services provided to a customer must left to the discretion of each CDFI. Requiring such an onerous standard would particularly harm regulated CDFIs that offer a wide range of financial products and services.

The expansion of technology-driven products and services further complicates the question of what type, how much, and how frequently a customer needs or wants Development 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 costs; (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.

To be noted the most important Development Services a CDFI typically offers is one-on-one technical assistance. 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 or other formal services. CDBA recommends that all Development Services be valued equally.

6. Accountability

Over the past 20 years, technology has radically changed how consumer access financial services. As technology disrupts and unbinds financial service delivery to geography, the CDFI Fund needs to rethink its interpretation of the Accountability test. A rigidly applied accountability test runs the risks of: (1) preventing CDFIs from adapting to change; and (2) puts the CDFI Fund in the position of micromanaging the CDFI industry.

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, all CDFIs will challenged to serve their customers in new ways and 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.

Numeric Standards: CDBA is opposed to setting strict numeric accountability standards for the composition of members of a CDFI's Board of Directors. In determining the right balance of "accountability' representatives, the CDFI Fund should consider the context within which the CDFI operates. Strict minimum percentages for Directors and/or advisory board members can be problematic if unexpected vacancies occurs. In addition, if a CDFI serves a large geographic area, multiple Target Markets, or a multi-state/national market, it can result in creation of a Board that is so large it becomes unwieldly and ineffective as a governance body. In the case of rural CDFI banks, meeting the accountability requirements can be challenging because the pool of qualified individuals is limited. Currently, individuals related to any bank employee or significant bank shareholder cannot be counted toward meeting the accountability test. Furthermore, many CDFI banks are family owned, including a large portion of Minority Depository Institutions and rural banks. In family-owned bank, the Board may be comprised of a significant number of related individuals – making it difficult to meet the accountability test based on Director composition. Hence, greater flexibility is needed to allow each CDFI to propose an accountability strategy that makes sense for its context. Finally, 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 Accountability test, but keeps the bank CEO in the denominator. Regulators require a bank's CEO to be on the Board. Thus, it is unfair to keep the CEO in the denominator and this practice should be ceased.

CDBA is concerned about the CDFI fund's practices of requiring a Board "accountability" representative for every Investment Area a CDFI may designate. Due to the peculiarities of the CIMS mapping system and the ever-changing nature of economic indicators, a CDFI may have to designate two different Investment Areas that are functionally part of the same market. Yet, the CDFI Fund requires that CDFI to appoint "accountability" representatives for each Investment Area. This practice easily results in Boards that become too large, unwieldly and ineffective as governance bodies.

Advisory Boards: Allowing CDFIs to use advisory boards to demonstrate accountability is important – particularly for regulated CDFIs. Advisory boards are valuable because they are flexible and can offer key insights to the needs of markets and submarkets. The expertise and skill set needed of bank Directors is often different. In the case of a bank, Directors have specific legal and fiduciary obligations proscribed by the Federal banking regulators and can be liable for the actions of the banks. These obligations are a significant disincentive for a small business owner, neighborhood resident, or others to serve of the Board of a bank. This circumstance can make it difficult for banks to recruit qualified Directors that can meet the accountability requirements.

CDFI Type: The CDFI Fund needs to embrace the diversity of the CDFI sector that includes regulated banks and credit unions and unregulated loan funds and venture capital funds. To that end, CDBA recommends that the CDFI Fund redesign its certification, funding application, and reporting formats in a manner that is tailored by CDFI type. Furthermore, in the case of regulated CDFI banks and credit unions, CDBA strongly encourages the CDFI Fund to adopt definitions and reporting standards that are consistent with bank and credit union regulatory agencies.

We appreciate the CDFI Fund's desire to have all CDFIs report data the same way to make it easier to aggregate its own data. Yet, regulated CDFIs have long-established regulatory definitions. These definitions are used to report financial performance, lending and other activities through the Call Reports (banks) or NCUA 5300 (credit unions). Banks and credit unions invest significant time and money into having regulatory compliant reporting systems. CDFI banks and credit union are part of a mature industry with well-developed definitions and standards.

Over the past 20+ years, the CDFI Fund has forced regulated CDFIs to go through the painstaking and expensive task of reclassifying their data to submit reports and applications. CDFI banks and their CDFI Bank Holding Companies and CDFI credit unions collectively comprise nearly 50% of the total number certified CDFIs and 87% of the total assets of the $137.9 billion CDFI industry. Yet, the CDFI Fund's certification and funding applications, as well as reporting forms are tailored to the unstandardized framework of unregulated CDFIs. Simply providing a "cross walk" document instructing regulated CDFI how to translate their data into applications and reports tailored to unregulated CDFIs is *wholly inadequate*.

CDBA strongly recommends that the CDFI Fund respect and embrace the differences between the varying CDFI sectors. CDBA very strongly recommends that the CDFI Fund create certification and funding applications, as well as reporting requirements that are tailored by CDFI type.

Business Plan: CDBA does not believe an entity's business plan should be used as part of a certification determination.

End Beneficiaries: Each CDFI needs to assemble a Board with sufficient expertise to guide the organization. Board members must understand both mission and how a financial institution operates. It may not always be feasible to find an individual that possesses the expertise and capacity to serve as an active, contributing Director that is also a member of a Targeted Population. CDBA believes that representatives of organizations (e.g. education organizations, healthcare centers) that serve Target Population "end beneficiaries" provide an effective alternative strategy to obtain needed expertise. Such representatives often make very strong Board members because they possess a highly informed understanding of the challenges and issues faced by the population despite not being a member of the Target Population.

National Target Markets: As noted, CDFIs serve different types of Target Markets. CDBA strongly discourages the CDFI Fund from creating a one-size-fits-all accountability standard for CDFIs. Each CDFI should have the flexibility to propose an accountability strategy that fits its context. The CDFI Fund should not seek to define what "local" means; this concept can vary depending on the market, products and services offered, and operating context. The CDFI Fund should develop a list of criteria for evaluating a CDFI's accountability strategy. This criterion should be published and the CDFI Fund should provide "real life" life examples used by practitioners that meet the requirements.

Web-Based Lending Platforms: As discussed above, accountability needs to match a CDFI's strategy and context. Web-based lending platforms are a delivery mechanism that, on their face, are not problematic. Technology enabled delivery possess the potential to increase access to capital; these platforms can deliver products faster and cheaper. The products offered on some platforms, however, are problematic when pricing, terms and conditions are not transparent. The lack of transparency, when targeted to low income, unbanked, underbanked or vulnerable populations, is among the greatest factors that allow predatory lending practices to flourish. Web-based lending platforms are most commonly associated with consumer and small business lending. As such, CDBA recommends that the CDFI Fund ensure that all web-based lending platforms be required to be in full compliance with all CFPB regulations to be considered for CDFI certification. In addition, the CDFI Fund should retain the authority to deny a certification application if they feel an applicant's products are not sufficiently transparent or the products are inappropriate for low income or vulnerable populations.

7. Non-Government Entity

CDBA does not recommend any changes to how the CDFI Fund currently screens applicants to ensure they are non-government entities.

8. Certification Policy and Procedures

Reason for Certification: On its face, CDBA does not object to asking applicants why they are applying for certification. Yet, it is unclear how this information will be used and its relevancy to the certification process. If a CDFI initially indicates that are applying for certification for marketing purposes or to obtain a regulatory exemption, can this information later be used to disqualify -- or make them less competitive when applying to any of the funding programs? In most cases, entities apply to be certified for a multitude of reasons.

Additional Data: CDBA believes that CDFI Fund should maintain the integrity of its certification process. CDBA does not object to the CDFI Fund using data obtained from other Federal agencies as part of a certification review. We strongly believe, however, that the CDFI Fund should not automatically grant certification to entities that have established eligibility under programs administered by other Federal agencies in lieu of its own certification. CDFI certification establishes eligibility for many of the CDFI Fund's competitive programs. Thus, all CDFIs that compete for scarce CDFI Fund resources must be held to the same standard.

Community Based: CDBA does not believe the CDFI Fund should attempt to define the phrase "community based" -- nor make it a requirement for CDFI certification. This phrase is a term of art commonly used by community development practitioners. CDFIs often define "community based" by the context of the market it serves. "Community based" is most commonly thought of as neighborhood focused, yet this describes only the more nascent portions of the CDFI industry.

As noted above, technology is rapidly delinking delivery of financial products and services from place. In the coming years, all CDFIs will be challenged to serve their customers in new ways and 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. This, we strongly discourage the CDFI Fund from defining all CDFIs as "community based" and restricting their ability to respond to change.

Native CDFIs: CDBA recommends no change to the CDFI Fund's current policies allowing Native CDFIs to self-designate.

Multiple Entities: CDBA recommends that the CDFI Fund remain consistent with its current policy of requiring each entity seeking certification to meet the requirements independent of the activities of any affiliates or subsidiaries. Furthermore, we recommended that the "consolidated treatment" rule (12 USC 4701(b)(5)(B)) that is applicable to CDFI banks AND Bank holding companies should be applicable to all CDFIs. Specifically, this provision says that an entity can only qualify as a CDFI if all of its subsidiaries and affiliates can meet the primary mission test.

Bright-line Tests: CDBA does not recommend any additional "bright-line" thresholds to the certification tests beyond the standards already in place. As particularly noted in the Accountability Test discussion, the certification process should maintain a sufficient degree of flexibility to allow CDFIs to change as their markets evolve.

Start Ups: CDBA supports the CDFI Fund's current policy of only certifying entity that are operational and that have proven their lending, investment or service activities meets all of the CDFI tests. No changes in policy are recommended.

Other Recommendations: CDBA strongly encourages the CDFI Fund to seek greater alignment and consistency in definitions across all of its program applications (e.g. certification, BEA, CDFI Financial and Technical Assistance, New Markets Tax Credits) and reporting systems (e.g. AMIS, CIIS). Lack of consistency in definitions, applications and reporting systems increases costs and frustration for CDFIs participating in the CDFI Fund's programs. These definitions should be tailored by CDFI type, but consistent across all programs and systems.

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 we 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 202-689-8935 ext. 222 or *jacokesj@pcgloanfund.org*.

Thank you for considering our recommendations.

The Membership of the Community Development Bankers Association

ABC Bank (IL)
Albina Community Bank (OR)
BankFirst Financial Services (MS)
Bank of Anguilla (MS)
Bank of Commerce (MS)
Bank of Kilmichael (MS)
Bank of Lake Village (AR)
Bank of Montgomery (LA)
Bank of Rio Vista (CA)
Bank of Vernon (AL)
Bank of Winona
BankPlus (MS)
Beneficial State Bank (CA)
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 National Bank (MS)
City First Bank of D.C., N.A. (DC)
City National Bank of New Jersey (NJ)
Commercial Bank (MS)
Community Bancshares of Mississippi (MS)
Community Bank of the Bay (CA)
Farmers & Merchants Bank (MS)
First American International Bank (NY)
First Eagle Bank (IL)
First Independence Bank (MI)
First Security Bank (MS)
First SouthWest Bank (CO)
FNBC Bank (AR)
Guaranty Bank and Trust Company (MS)
Illinois Service Federal (IL)
Industrial Bank (DC)
International Bank of Chicago (IL)
Legacy Bank and Trust (MO)
Mechanics and Farmers Bank (NC)
Merchants and Planters Bank (MS)
Metro Bank (KY)
Mission National Bank (CA)
Mission Valley Bank (CA)
Native American Bank, N.A. (CO)
Neighborhood National Bank (CA)
NOAH Bank (PA)
Northern Hancock Bank & Trust (WV)
OneUnited Bank (MA)
Oxford University Bank (MS)
Pan American Bank (IL)
Peoples Bank (MS)
Planters Bank (MS)
PriorityOne Bank (MS)
Richland State Bank (LA)
RiverHills Bank (MS)
Savoy Bank (NY)
Security Federal Bank (SC)
Southern Bancorp, Inc. (AR)
Spring Bank (NY)
Start Community Bank (CT)
State Bank & Trust Company (MS)
Sunrise Banks (MN)
Sycamore Bank
The First, A National Banking Assoc. (MS)
The Jefferson Bank (MS)
United Bank (AL)
United Bank of Philadelphia (PA)
Urban Partnership Bank (IL)
Virginia Community Capital (VA)

March 10, 2017

Dear David Meyer, Certification, Compliance Monitoring and Evaluation (CCME) Manager,

On behalf of Accion Chicago we are pleased to provide you with the following feedback for the CDFI Certification RFI items that we felt fall within our scope of activity. Our responses are in red. The items are organized in this document in the sequential order that they are presented on the website, and they retain the same numbering. Thank you for the opportunity to comment on the current policies and procedures related to certifying an organization as a CDFI.

We would welcome any questions that you may have after you review this submission.

Thank you for requesting and considering our input on these questions.

C. *Financing Entity*

3. Currently, the amount of assets and staff time dedicated to financing activities are used to measure the level of a CDFI's financing activity. How else could a CDFI's level of financing activity be measured?

> Tracking assets is more effective and easier to audit than staff time. Measuring off balance sheet assets under management should be included in measuring the level of a CDFI's financing activity.
>
> It is important to consider the effort that CDFIs make to prepare applicants for loans. The amount of technical assistance needed to get an applicant prepared for a loan is not reflected in reports to the CDFI.

9. Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status?

> Yes. Minimum standards for volume over a 3-year period would also be important. The CDFI would need to meet the standard over that time frame or provide sufficient information on why that did not happen.

D. Serves an Investment Area or Targeted Population

1a. Is the current standard that 60 percent of a CDFI's Financial Product activities must be in qualified Target Markets the right standard? If not, what percentage of transactions should be in and/or to a qualified Target Market to demonstrate that an organization serves that Target Market and why?

> Regarding strict percentages: It shouldn't be lower than 50%. 60% is probably right. Allowing the CDFI to alternate between a target geographic area and a target population would be very helpful. For example, it can be said that making a loan to a business owner who is not CDFI target market eligible on an individual basis, but who operates a business which employs people in the target market population and encourages economic growth in market region, is essentially serving a target market if the outcomes can be verified.

1b. Should there be different thresholds for different institution types (i.e., Insured Depository Institutions and Credit Unions, nonprofit loan funds, and venture capital funds)?

Yes

1c. The CDFI Fund currently relies on self-reported summary data submitted by Applicants to demonstrate that they meet the Target Market threshold test. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?

For an organization of our size this could be labor intensive. However, as long as this is simple to execute for a CDFI, it might work. Just be careful not to overly burden organizations already undercapitalized and understaffed.

1d. The August 31, 2015 Interim CDFI Program Regulations added the provision of Financial Services as a means of demonstrating that an applicant serves a Target Market. However, the CDFI Fund does not currently have a method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured? If an Applicant requests credit for providing Financial Services, should there be a separate minimum level of Financial Products that must be provided by the Applicant?

Yes, but they should not be penalized if financial services comprise a greater percentage of non-target market persons, as this can be means of leveraging services to sustain mission based operations rather than non-compliance.

This is where realities on the ground are very important. Accion targets minority and low income entrepreneurs with its services. However, those entrepreneurs are at inherent disadvantages for debt products as a result of lower capitalization, tougher credit histories, etc. So while 85% of the people through the Accion door might be in our target market, 75% of our borrowers are in the target market, but we struggle to have 60% of our dollars disbursed reach the target market. This isn't for lack of effort on our part, it is a result of the wealth and resource gap in these communities. This reality makes a one-size fits all CDFI certification solution difficult.

1e. The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this the appropriate time period to consider, or should a longer period of time be considered? If so, should the applicant be required to meet the threshold in each year of the test, for a time period, or should an average be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?

It would be optimal to look at a longer period - 3 years would be great. Trends should be taken into account and explained. CDFIs need some room to experiment to find better solutions for their target population, and they need enough room to do so. Loans outstanding doesn't add a different dynamic, so we don't think there is a need to include that.

2. Investment Areas

2a. The CDFI Fund's current practice is to define Investment Areas that are composed of one or more units of geography that meet certain distress criteria. Units include but are not limited to counties, census tracts, and Indian Reservations. Should the CDFI Fund change this practice? If so, how?

In consideration of technology and the ability to virtually provide services, this should be defined as wherever the end user is located.

3. Target Populations

3a. Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?

Yes. Women. Veterans. Start-up businesses (less than 2 years old). These populations are at disadvantages for a variety of reasons. In Accion's scenario, we are providing financing to help entrepreneurs start and expand businesses because the market doesn't serve them. The more opportunity they have the more jobs and overall entrepreneurial activity will happen in low-income areas.

The closer CDFI is able to align with SBA Community Advantage objectives the better an organization like Accion will be able to reduce its dependence on subsidy. Larger loans, like SBA CA loans, are profitable for an organization like Accion but can put pressure on the 60% threshold for CDFI. This works against the financial stability of Accion and can create more dependence on subsidy than there needs to be.

3b. CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?

Yes. Geographic constraints, like state lines, can put constraints on the ability of a CDFI to grow. We want as many people in the target population to be served as possible without tying the hands of the CDFI. For instance, Accion Chicago cannot count loans made to low income borrowers in Gary, IN toward its CDFI measures because it is across state lines. The company then has a disincentive to help those that are easily within geographic reach, and potentially within the same MSA, but not within a tighter defined CDFI area.

E. Development Services

E1. Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?

Non-financial services that assist and promote the performance and efficacy of financial products that are currently provided by the institution.

F. Accountability

F1. What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, i.e. governing vs. advisory boards?

Big picture, accountability should be measured by prudent financial activities provided to the target market.

Regarding governing boards: they should not be required to meet full accountability rules, but minimum accountability would be appropriate (i.e., at least one representative from each target population). Advisory boards SHOULD need to meet full accountability rules. Most important of course is delivering services to the right population. Also, consider that percent representation of different boards may be additive.

F2. Is representation on an advisory board sufficient to demonstrate accountability?

Yes

F3. Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?

CDFI should see accountability in the impact of results and outcomes to the market – efficiency and compliance in delivery of services to the right populations. Result driven concepts of accountability are more important.

F4. Is a business plan and a stratified, statistically significant random sample of lending by asset class and location sufficient to document accountability? Under what circumstances?

Yes. All circumstances where the results are consistent with business plan objectives should be sufficient. In cases where they are inconsistent then other accountability metrics can come into play as mitigating factors.

F8. How should an Applicant that utilizes a web-based lending platform, especially one that serves a national Target Market, demonstrate accountability?

Same as anyone else. Needs to deliver results to an identified target market and accountability should be to the target market demographics, if not the geography. Some geographic diversity (potentially with multiple advisory boards) does make sense. We use a Client Advisory model, which creates an advisory committee that is comprised of clients, and is representative of our target market demographics.

3 General Certification Questions for Public Comment

3A. "Community-based" is a term often used to describe CDFIs. How should "community-based" be defined and what does it mean for CDFIs to be "community- based?"

It depends on local dynamics. For instance, in Chicago there is a tension between CDFI's being "downtown" and not being in a low-income neighborhood. Granted, low-income neighborhoods are less likely to be centralized, more likely to be identified with a specific ethnicity, etc. Long story short, it would be optimal for CDFI's to actually operate out of low-income communities given the lack of community assets, but that should not be a gating issue to effective production.

It should be the case, and consumers should know and feel, that working with a CDFI means more than just access to capital from a non-traditional lending institution. There is a measure of safety, standards, and regulations regarding the products and the organization. In some ways, serving the community should first be about distributing funds into a community/region that needs the funds, and then to consider employment/economic outcomes in the community related to those funds.

3C. Should CDFIs be allowed to be composed of multiple legal entities (Subsidiaries and/or Affiliates)? And if so, must a CDFI include all of its Subsidiaries and/or Affiliates for consideration?

Yes a CDFI should be able to have multiple subsidiaries. No each subsidiary should not need to meet CDFI guidelines. It is possible for a CDFI to have an affiliate that is profitable, but does not provide financial services, and so it is able to reduce the subsidy required to operate the CDFI financial services company. This should be flexible enough for a CDFI to articulate how it thinks about these things and ensures it doesn't mission drift off course.

3D. Should CDFI certification standards have more "bright-line" tests, i.e. specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?

Prioritize flexibility over bright lines. We should have bright lines where possible, but given the vast differences between CDFI's and the evolving nature of financial services CDFI should also ensure there is room for flexibility.

From: Joyce Dillard [mailto:dillardjoyce@yahoo.com]
Sent: Friday, March 10, 2017 7:24 PM
To: CDFIHELP <C2@cdfi.treas.gov>
Subject: [EXTERNAL]Comments CDFI_FRDOC_0001-0033 Community Development Financial Institution Certification; RFI due 3.10.2017

The following CDFI, as a LEGAL ENTITY, definitions are basically the same:

(i)Has a primary mission of promoting community development
(iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;

Development Services is not clearly defined, so fixed assets would suffice for both and not any related services for community development.
The following:

(ii) serves an investment area or targeted population;

does not clarify the definition of "serves". "Serves", at this point in time, means "placed" in an investment area or targeted population. It does not necessarily effect the people who need the development to improve their circumstances.
The following:
(*iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.*
allows Advisory Boards to mean the term "or otherwise" but have no voting power in the final decision. In our experience the governing board is chosen by their position to the incorporating entity. In the case of the City of Los Angeles, a Chartered City in the State of California capable of making laws, is the entity behind the LA Development Fund, the CDFI entity.

The Governing Board is chosen by position within the city employment:

- Chief Administrative Officer CAO or his alternative, as the chief financial officer, serves the City Council and Mayor
- Chief Legislative Analyst CLA or her alternative, serves the City Council
- Housing and Community Investment Department General Manager or his alternative
- Economic and Workforce Development General Manager or her alternative

Projects may be generated by the Mayor, Councilmember or the departments stated. Open meetings, records and conflict of interest laws are under the State of California.

Legal entities are easy to create through corporations including non-profit corporations. Their subsidiaries, including limited liability corporations, are more difficult to access as disclosure is limited and governance may be disclosed with limitations.

“Target Market” needs application to your criteria. So far, we see benefit to the tax credit holder, not the Targeted Population or Investment Area.
Primary Mission needs to be exacted. In our experience, we see awards to entities that develop opportunities for large industries, such as sports and entertainment or global market participation such as the cleantech industry.   We have attended presentations   by the German firms targeted the City’s utility industry (department) with no application to Targeted Populations of Investment Areas.

We cannot recognize that Financial Products are a result of a CDFI. There is no history presented in the meetings we have intended nor are results presented. Once the loan is closed, there does not exist any governance under the main CDFI entity.

Financing Entity issues, including predominance may conflict with non-profit mission issues, making the legal entity’s services for –profit. This conflict has not been addressed and may be the reason that limited liability corporations are formed for each investment. We do not always see that Targeted Populations are considered in contracts or employment. Sole-source awards should be reported, otherwise just placement in area is deceptive investment.

National Target Markets should be targeted, as unemployment statistics should be relative. There should be some change showed in an area with a CDFI who awards funds.

Serves an Investment Area or Targeted Population is a problem when the Census is taken every 10 years without any other proof that the market is served. We have seen gentrification in areas that still qualify but the income level has increased and there is no benefit to the original area or population. Property tax revenue increases should be another way to see if the area is gentrified.

Non-Governmental Entity is an area fraught with problems. If non-profit, the services must be separate from any influence of a political entity, and it is not at this point in time. We have always differed with Charter School investments in California, because the non-profit corporation is also a State Local Education Agency or hybrid. There seems to be no proof by the CDFI that there is no influence by an elected official or governing board member to award funds.

Results need to be statistically driven and analyzed with comparatives and timeframes. We see there is more narrative and little statistics in the CDFI process.

This needs to be effectual to more than the wealthy which both individuals who can take tax credits and banking firms.

Joyce Dillard
P.O. Box 31377
Los Angeles, CA 90031

Enterprise®

David Meyer
CCME Manager
CDFI Fund
1500 Pennsylvania Avenue NW.
Washington, DC 20220

March 10, 2017

Dear David,

RE: Request for comments on CDFI Certification, Federal Register 2251, Vol. 82, No. 5, Monday, January 9, 2017

Founded in 1983, Enterprise Community Loan Fund, Inc. (ECLF) is a high performing national CDFI and the lending arm of Enterprise Community Partners, Inc. 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 $1.6 billion has generated significant measurable impacts. In the affordable housing sector, ECLF has supported the development or preservation of over 106,000 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 field.

We offer the following comments in bold with respect to the questions posed by the CDFI Fund in its request for public comment:

I. Certification Criteria

A. Legal Entity: To satisfy the legal entity test, the CDFI Fund requires evidence of an Applicant's incorporation/organization/establishment, such as IRS documentation, establishing documents filed with appropriate authorities or charter numbers for Insured Depository Institutions and Credit Unions at the time of certification application.

1. The statute does not indicate how long an organization must be in existence to be considered a ''person (other than an individual).'' Should there be a minimum period of time an organization should be in existence before applying for CDFI certification? If so, how long? If not, why not?

There should be at least a three year minimum to demonstrate community support and need as well as stakeholder commitment and engagement.

B. Primary Mission: The statute states that a CDFI must have "a primary mission of promoting community development," but specifies few criteria for meeting that test. The CDFI Fund currently allows Applicants for certification to meet this test by providing board-approved organizational documents that demonstrate that the Applicant has a primary mission of promoting community development along with a narrative statement describing how the Applicant's mission is consistent with the CDFI Fund's and a brief description of Financial Products offered. Insured Credit Unions that have received a Low Income Designation from the National Credit Union Administration are deemed to have met this criterion by virtue of their designation.

1. Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate an Applicant's primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund provide a more explicit, possibly quantitative, definition of what it means to ``promote community development'' that Applicants would be required to meet? If so, what should be the definition and what test should be applied? Are there criteria that the CDFI Fund should not consider and why?

We feel that board approved documentation should be supplemented. It is important that there be documentation that an organization has a mission of community and economic development as the CDFI Fund currently requires. Such documentation, while necessary, should not be the sole determinant of whether an organization will have, or has carried out its community and economic development mission.

It might be difficult to find a uniform standard that could be applied across all CDFIs and therefore, it may be overly prescriptive to base a mission-test solely on quantitative information. Existing CDFIs cross the sectors of banks, credit unions, loan funds and venture funds and each type may adopt different means to carry out their mission of promoting community and economic development. At a minimum, the CDFI Fund should require CDFIs to provide a narrative of how their organization as a whole carries out its mission (including affiliates or subsidiaries). This is where an applicant can provide further documentation that evidences CDFI Fund requirements. For existing CDFIs, the Fund could require a narrative covering both the period since certification was last obtained addressing any material changes proposed for the three year period for which re-certification is requested.

3. What evidence can the CDFI Fund use to confirm an Applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose actions do not demonstrate intent to create community development and/or are predatory in nature?

At least 60% of a CDFI's portfolio should support low income individuals and communities. As discussed above, if the CDFI Fund conducts a portfolio examination at the time of certification this could also indicate intent to support community and economic development.

5. Currently, by statute, Depository Institution Holding Companies wishing to be certified as CDFIs must provide documentation that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test. Should the CDFI Fund also make this a requirement

for Non-Regulated CDFIs, for example, a Non-Regulated for-profit financial institution? Why or why not?

If proceeds are flowing to/through a parent, subsidiary, and/or affiliate organizations, regardless of whether they are regulated or non-regulated, these organizations should meet the primary mission test.

C. Financing Entity: Insured Depository Institutions and Credit Unions are deemed to automatically meet this criterion. Non-Regulated CDFIs must demonstrate that they engage in direct financial activity (e.g., the provision of Financial Products, Financial Services, and Development Services) as reflected on financial statements and executed notes, and must dedicate a predominance of their assets to Financial Products, Development Services, and/or similar financing.

3. Currently, the amount of assets and staff time dedicated to financing activities are used to measure the level of a CDFI's financing activity. How else could a CDFI's level of financing activity be measured?

Staff time and assets are the appropriate measures of the level of financing activities. We understand market conditions can change so a narrative response should be allowed.

4. For Non-Regulated CDFIs, is the current "predominance of assets" test appropriate, or should alternatives or additional considerations be permitted?

For Non-Regulated CDFIs, the predominance of assets test is appropriate.

5. Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI's financing activities?

Mission-focused affiliates or subsidiaries should be counted as well, in addition to the CDFI itself being a financing entity.

6. Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities?

If an affiliate or a subsidiary meets the mission test then the financing activities of a subsidiary or affiliate should also be counted.

10. Currently, non-arms-length transactions do not contribute to meeting the financing entity criteria. For example, transactions made with Subsidiaries and/or Affiliates are not considered to be arms-length transactions. Should some transactions with Affiliates be permissible as evidence

of an organization being a financing entity? If so, which ones? How should an ``arms-length transaction" be defined?

If an affiliate or subsidiary meets the mission test, then transactions with these organizations should be permissible. Additionally, if an organization can provide evidence that the terms of such transactions are at arms-length, then the transaction should be counted as such.

11. Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not?

As stated above, if an affiliate or subsidiary meets the mission test, then there should be no limit on the amount of transactions and types of lending. For example, a CDFI might provide bridge financing to an affiliate or subsidiary that syndicates Low Income Housing Tax Credits or provide bridge financing until permanent financing is closed. This financing is extremely important to bring projects to completion.

D. Serves an Investment Area or Targeted Population: Applicants for certification must identify the Investment Area(s) and/or Targeted Population(s) they intend to serve as their Target Market.

1. Threshold Target Market Test: Although no threshold level of service is indicated in the statute or regulation, current CDFI Fund policy requires that an organization must serve at least one eligible Target Market and must direct at least 60 percent of all of its Financial Product activities to one or more eligible Target Market to qualify for certification. In general, both the number and dollar amount of the organization's Financial Product activities should be at least 60 percent of all of its Financial Product activities in the most recent fiscal year. If an organization does not meet the 60 percent threshold in terms of number or dollar amount of transactions (but not both), the organization can provide an argument as to why the figure is less than 60 percent and the CDFI Fund reserves the right to accept or reject the explanation.

c. The CDFI Fund currently relies on self-reported summary data submitted by Applicants to demonstrate that they meet the Target Market threshold test. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?

The CDFI Fund should maintain the ability to do statistical sampling, and should test a percentage of all CDFIs annually. The CDFI Fund should use the CIIS reporting for current CDFIs who have received awards and annually report to the CDFI Fund and not create an additional reporting burden since the Fund already receives this information.

e. The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this the appropriate time period to consider, or should a longer period of time be considered? If so, should the applicant be required to meet the threshold in each year of the test, for a time period, or should an average be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?

The threshold test should be applied as a rolling average over a three year period of a CDFI's designated fiscal year. It should not be a specific point in time test. For organizations that might not meet the test in a particular year due to potential circumstances out of their control, an explanatory narrative should be allowed. The CDFI Fund should refer to the CIIS reports for CDFIs who have received awards.

4. Investment Areas: The statute requires that an Investment Area must meet at least one of the economic distress criteria (poverty rate greater than 20 percent; Median Family Income (MFI) at 80 percent or below specific MFI benchmarks; unemployment rate 1.5 times the national average) and has significant unmet needs for Financial Products and Services, or is wholly located within an Empowerment Zone or Enterprise Community.

a. The CDFI Fund's current practice is to define Investment Areas that are composed of one or more units of geography that meet certain distress criteria. Units include but are not limited to counties, census tracts, and Indian Reservations. Should the CDFI Fund change this practice? If so, how?

Census tracts should be the preferred unit of measure unless it is impractical, such as for Native or non-metropolitan areas.

3 Targeted Populations: Targeted Populations include Low Income Targeted Populations (LITP) and Other Targeted Populations (OTP) for a specific geographic unit. LITP, for a specified geographic unit, by statute includes individuals whose family income (adjusted for family size) is 80 percent of the area MFI (for metropolitan areas). LITP in non-Metropolitan Areas is the greater of 80 percent of the area MFI; or 80 percent of the statewide non-Metropolitan Area MFI. The CDFI Fund currently includes, for a specific geographic unit(s), African-Americans, Hispanics, Native Americans, Native Alaskans, Native Hawaiians, and Other Pacific Islanders among the groups automatically considered eligible for an OTP Target Market. Applicants are permitted to seek OTP recognition for other populations by demonstrating that the group lacks access to capital.

a. Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?

Yes. If the population is eligible for other federal programs that share economic and community development goals similar to the CDFI Fund, then those populations should qualify to be considered Targeted Populations.

The statutory language is broad enough to allow the CDFI Fund to include more specifically defined Other Targeted Populations that have been found to lack access to credit and capital by other federal agencies. Each state may differently define populations considered to be

"at-risk" or in need of expanded access to credit and capital. Having a narrow guidance does not allow CDFIs to consider state/regional priorities for populations that have been identified at the local level as having the greatest need for assistance.

b. CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?

The Targeted Populations definition should be a national designation unless a CDFI specifically requests a smaller area. A CDFI should not be limited as to which markets they can serve, as one of the benefits of a CDFI is its ability to be the flexible and nimble in meeting demand wherever it lies.

4. National Target Markets: Currently, in order to be certified with a Target Market national in geographic scope, CDFIs need to show that they have conducted their financing activities broadly across the variously defined regions of the country, (e.g. Northeast, West, Midwest, South, Southeast, etc.)

a. Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments?

No. There should not be a minimum geographic dispersion of actual investments. CDFIs are known for being nimble and responding to market demand whenever and where ever it arises. Therefore, CDFIs should be accorded the flexibility to operate on a national basis if this is in line with their strategic and operating plans. CDFIs may need to make adjustment to their business plans or investment strategies throughout the year; adhering to a certain dispersion or commitment to disbursing capital in certain areas will limit flexibility and result in confusing and onerous reporting and compliance requirements.

Requiring approval to ask for an amendment to their certification each time a CDFI desires to do business in a new state or area increases the amount of time it will take for a CDFI to get their products and services to that market. For example, typically when natural disasters strike CDFIs will make an effort to immediately put " boots" on the ground and begin serving those communities. Waiting for an approval to do so would slow the process of getting services and financing to those most in need.

b. Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these practices as constituting a national Target Market?

As long as a CDFI is targeting Low Income Targeted Populations and is operating in line with its strategic and operating plans, serving a national market make sense. As an

alternative, instead of a CDFI specifically identifying states as their target market, the CDFI Fund could identify regions, similar to the Federal Home Loan Bank system and allow CDFIs to choose Target Markets by region rather than by state.

E. Development Services: A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. Development Services means activities undertaken by a CDFI, its Affiliate or contractor 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. For example, such activities include, but are not limited to, financial or credit counseling; homeownership counseling; and business planning and management assistance.

1. Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?

No. Development Services should not be more explicitly defined. CDFIs serve an array of borrowers/clients which require varying levels and types of resources, services and/or technical assistance. Some borrowers/clients served by CDFIs do not need these additive offerings, yet are still in need of critical financing to support economic and community development.

2. Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service?

No. As discussed above borrower/clients go to CDFIs for a variety of products and services and CDFIs should be able to use their resources in the most efficient and effective manner to provide these financial products and services. Requiring Financial Products and Financial Services to be tied, would create an unnecessary burden, especially if a service is not needed, and inhibits the CDFI to use resources which could have been utilized more effectively elsewhere. Neither the statute nor the regulations explicitly state that there be a corresponding Development Service for each financial product.

3. Should a certified CDFI be required to offer each Development Service each year to maintain certification status?

No. A CDFI's Development Services should be relevant to the Target Market it serves and should change as the needs of the individual Target Market changes.

F. Accountability: The CDFI Fund currently requires that a CDFI maintain accountability to its Target Market through representation on its governing board and/or advisory boards. Prior to recent changes in the regulation, a CDFI could: Demonstrate accountability through other mechanisms such as focus groups, community meeting, and/or customer surveys.

1. What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, i.e. governing vs. advisory boards?

Accountability for an organization to meet Target Market representation can be met through its governing board or advisory boards. These boards should have representation from individuals that work within the organization's Target Market.

2. Is representation on an advisory board sufficient to demonstrate accountability?

Yes. Representation on an advisory board should be sufficient. Both Advisory Boards and Governing boards serve CDFIs in multiple capacities.

3. Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?

Yes. We believe advisory boards throughout the organization and/or local markets can be sufficient to demonstrate accountability.

5. Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how?

Having requirements based on the type of Target Market should suffice. Accountability could include representation, experts and/or individuals who work with the organization's Target market.

6. How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (e.g., small businesses, micro businesses, and affordable housing developers, charter schools), but whose ``end-beneficiaries'' are?

If an organization has representation of individuals who serve "end-beneficiaries" on its governing and/or advisory board, this should suffice. These individuals are providing guidance at a local level to represent and bring resources to communities for "end-beneficiaries". For compliance purposes, the Fund needs to develop guidelines for the types and levels of end beneficiaries that fulfill the accountability requirements.

7. How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? In this context, how should the term ``local'' be defined?

There should not be a requirement to have local accountability per se. To maintain reasonable governance board/ advisory board sizes you cannot have a representative from each Target Market. CDFIs should be able to attract the most qualified and suitable Board

members to align with their strategic and operational plans. Many board members provide a set of experiences and skills that align with service to the Target Market, though are not necessarily located in a particular Target market. CDFIs partner with local governments, other CDFIs, banks and non-profits to further ensure accountability to local communities.

I. General Certification Questions for Public Comment: Through this RFI, the CDFI Fund invites comments and responses to the following questions regarding CDFI certification:

D. Should CDFI certification standards have more ``bright-line'' tests, i.e. specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?

The evaluation of an applicant ought to be able to take subjective factors into account and therefore not be limited to bright line tests. Creating certain quantitative benchmarks might work for one market/region, yet cut out another market/region all together. CDFIs need to be able to work in the market gaps. If a few standard quantitative test measures are needed, then there needs to be flexibility and allowance for an organization to narrate.

We look forward to answering any of your questions.

Sincerely,

Lori Chatman

Lori Chatman
President
Enterprise Community Loan Fund

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March 10, 2017

David Meyer
CDFI Fund
1500 Pennsylvania Ave., NW
Washington, DC 20220

RE: CDFI Fund RFI on Certification Criteria

Dear Mr. Meyer:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing in response to the Community Development Financial Institutions (CDFI) Fund's Request for Information (RFI) regarding CDFI certification. NAFCU appreciates this opportunity to provide feedback on the existing process as the Fund embarks on a review of its CDFI certification tests. Generally, NAFCU believes that the Fund should eliminate redundant required documentation in some areas of the certification process, and lessen the overall reporting burden in recognition of credit unions' unique nature.

Background

As of January 31, 2017, there were 287 credit unions certified as CDFIs, representing approximately 27 percent of all certified institutions and more than 50 percent of all CDFIs' total assets. Clearly, CDFI credit unions are critical partners in the CDFI Fund's mission. In recognition of this importance, and in exploring ways to enable even more credit unions to be recognized as CDFIs, the NCUA, CDFI Fund and Treasury entered into a trilateral Memorandum of Understanding (MOU) in January 2016. A significant component of the MOU included the introduction of a streamlined CDFI application for credit unions. While the streamlined application certainly furthers the MOU's goal of increasing the number of CDFI credit unions, NAFCU believes that the CDFI Fund should take additional steps, beyond the streamlined application, to increase the number of CDFI credit unions while still maintaining the program's integrity.

Specifically, NAFCU believes that the CDFI Fund should more readily leverage the fact that, by statute and their implicit nature, credit unions are well-regulated, not-for-profit, depository institutions that are operated, owned and held accountable by their members. Among all entities eligible for CDFI certification, credit unions are unique in holding all these characteristics, which align directly with the *Community Development Banking and Financial Institutions Act* (CDFI

Act). Accordingly, NAFCU believes that as CDFI eligibility and reporting requirements are revisited and revised, the CDFI Fund should acknowledge these defining characteristics by eliminating duplicative requirements, or at least providing presumptive compliance with such criteria.

General Comments

As the Fund reviews its application and reporting requirements, NAFCU urges it to closely consider the difference between regulated and unregulated entities, and the already thorough reporting requirements with which credit unions comply. Credit unions are subject to numerous consumer protection provisions in the *Federal Credit Union Act*, including a usury ceiling, a prohibition on prepayment penalties, and a limit on the amount of loans that can be originated to small business members. Credit unions are also statutorily limited to serving members of groups that have a close affinity

In addition to the *Federal Credit Union Act*, credit unions are regulated by numerous other federal consumer protection laws and regulations, such as the *Truth in Lending Act*, the *Real Estate Settlement Procedures Act*, the *Fair Credit Reporting Act*, the *Fair Housing Act*, and many others. No matter how small or understaffed a credit union might be, every credit union must comply with these statutes and regulations.

Separate from a credit union's internal compliance department, every federally-insured credit union also receives an external consumer compliance review on a periodic basis. The National Credit Union Administration (NCUA), or the appropriate state regulatory agency, examines credit unions to ensure compliance with consumer protection rules and regulations. Credit unions are required to cure any deficiencies that might be found. Even when the examiner is not on-site, federally-insured credit unions are required to submit Call Report data to NCUA every quarter. As NCUA is in the process of updating the content of the call report, and modernizing the data input mechanisms, NAFCU recommends that the Fund collaborate with NCUA and seek out ways it could leverage data already provided in the Call Report.

Understandably, the Fund wants to ensure that CDFI designees act in good-faith, are mission driven, do not participate in usurious or unscrupulous activities. It is therefore reasonable to have a certification process and ongoing reporting requirement to weed-out those entities that do not hold such characteristics. However, since credit union regulatory agencies share many of these common concerns, all federally-insured credit unions are already examined for such characteristics, and as such, the Fund should rely on these agencies' findings and requirements rather than requiring redundant information to prove as much. Essentially, state and federal agencies are independently ensuring that credit unions are already meeting many of the Fund's goals. The very fact that these credit unions exist and operate under the color of law should be sufficient to meet three-fifths of the Fund's requirements. The three remaining eligibility requirements not already reviewed by other agencies could be further streamlined.

Attached to this letter are NAFCU's responses to each of the individual questions in the RFI. NAFCU appreciates this opportunity to provide comments on ways to improve the current process, and we look forward to seeing our recommendations implemented. Should you have any questions, please do not hesitate to contact me at (703) 842-2249 or memancipator@nafcu.org.

Sincerely,

Michael Emancipator
Senior Regulatory Affairs Counsel

I. <u>Certification Criteria</u>

A. Legal Entity

1. *The statute does not indicate how long an organization must be in existence to be considered a "person (other than an individual)." Should there be a minimum period of time an organization should be in existence before applying for CDFI certification? If so, how long? If not, why not?*

Although NAFCU has no comment on how long an organization must be in existence, NAFCU believes that the certification criteria should not include a requirement for credit unions to provide evidence of being an entity. As a requirement for federal insurance, credit unions must be legal entities. Therefore, by virtue of their federally-insured status, such credit unions should presumptively be found to be legal entities.

2. *Is there additional documentation, beyond an organization's establishing documents filed with State jurisdictions, that should be accepted to demonstrate that an organization is a legal entity?*

NAFCU does not believe that additional documentation is required to demonstrate an entity's legal status. In fact, if an entity is already regulated by a federal agency, such as credit unions, then the Fund should presumptively find the applicant to hold legal entity status.

B. Primary Mission

1. *Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate that an Applicant's primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund apply a more explicit, possibly quantitative, definition of what it means to "promote community development" that Applicants would be required to meet? If so, what should be the definition and what test should be applied? Are there criteria that the CDFI Fund should not consider and why?*

NAFCU believes that the "primary mission" criteria is an important element to CDFI certification, but a prescriptive test beyond a narrative would be difficult to implement and inherently hard to verify. Adding a prescriptive test would likely add a layer of burden without much likelihood of producing a measurable benefit. However, if a credit union has a low-income designation conferred upon it by NCUA, then the Fund should consider such designation as sufficient evidence of a credit union's "primary mission" of community development.

2. *Should there be different standards for meeting the primary mission test for nonprofit versus for-profit organizations, particularly for-profits that are not Insured Depository Institutions? If so, what different standards should be applied?*

Once again, this criteria is difficult to quantify and does not lend itself well to prescriptive tests. NAFCU believes that the current requirements are appropriate.

3. *What evidence can the CDFI Fund use to confirm an Applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose actions do not demonstrate intent to create community development and/or are predatory in nature?*

While NAFCU believes that it is difficult to provide evidence that demonstrates a primary mission of community development, it should be relatively easy for the Fund to identify entities that are *not* committed to community development. Evidence of repeated violations of fair lending, usurious loan rates, high default rates, and other consumer protection violations could serve as such evidence. However, NAFCU urges the Fund to note that credit unions already undergo such evaluations during routine examinations, such as the Consumer Compliance Rating System. Requiring credit unions to demonstrate compliance to the Fund would be unnecessarily duplicative.

4. *To what extent should the CDFI Fund evaluate the Financial Products and/or Financial Services offered by an Applicant to determine its ability to meet the primary mission test? What test would the CDFI Fund apply in any such evaluation of Financial Products and/or Financial Services?*

Much like NCUA and other prudential regulators do for regulated entities, the Fund should evaluate an applicant's products and services to ensure that the applicant does not violate federal consumer protection laws. Further, the Fund should require unregulated entities to have a system in place to internally monitor compliance, much like credit unions are already required to do. To be clear, though, credit unions are already examined by NCUA to ensure compliance, and should not be required to submit redundant verification of compliance to the Fund.

5. *Should the CDFI Fund require Non-Regulated CDFIs to provide documentation that all its affiliates must collectively meet the primary mission test? Why or why not?*

Yes, for the sake of equal treatment across industry type, NAFCU believes this requirement should apply to non-regulated CDFIs, as well.

C. Financing Entity

1. *Should the term "predominance" be defined more specifically, and if so, how?*

Although credit unions are presumptively deemed to be financial entities, NAFCU believes that the "predominance" standard could be better defined as "plurality" of an entity's assets being dedicated to financial products, development services, and similar financing.

2. *Should entities that provide less than a plurality of financing activity ever be considered Financing Entities? If so, under what circumstances and is there a minimum level of activity that should be required?*

No, NAFCU believes entities should only be eligible for the CDFI designation so long as they provide at least a plurality of financing activing.

3. *How else could a CDFI's level of financing activity be measured in addition to current measure of assets and staff time dedication?*

Although this standard does not apply to credit unions, the Fund might want to evaluate and measure an unregulated entity's total customer/client base compared to the number of customers/clients that utilize the entity's financing services.

4. *For Non-Regulated CDFIs, is the current "predominance of assets" test appropriate, or should alternatives or additional considerations be considered?*

NAFCU believes the Fund should look into additional ways to evaluate a non-regulated entity's "predominance of assets" test, including the use of "plurality" and percentage calculation of total clients to those who count toward an entity's financing activities.

5. *Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI's financing activities?*

No. A non-regulated CDFI should be required to stand on its own when demonstrating its financial services activity. Otherwise, the subsidiary's activity could count toward a significant amount of the parent's financing activity, despite the fact that the subsidiary does not have a primary mission of community development, or worse, could be usurious in its financing activities. If a subsidiary's activities are counted toward a parent's financing activities, then the Fund should institute an additional check to ensure that the affiliate structure is not being used to avoid any of consumer protection requirements while simultaneously gaining the benefits of CDFI designation.

6. *Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities?*

For the reasons stated above, if a parent's or subsidiary's activity is used to count toward cross-affiliate financing activity, then the non-certified CDFI affiliate should be further examined to ensure circumvention of consumer protection rules is not occurring.

7. *Should an organization applying for CDFI certification be required to transact a minimum number or dollar amount of loan or equity investments to be considered a financing entity? Should the Applicant be required to have at least one or more years of loan or equity investment origination? If so, what should those rules be?*

NAFCU does not believe that there should necessarily be a minimum dollar amount of loan or equity investments required for certification.

8. *Should an organization that only services loans or Equity Investments or has very few transactions be considered a financing entity?*

NAFCU believes that the determination of financing activity should hinge on the percentage of *non*-financing activity compared to financing activity rather than examining absolute numbers.

9. *Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status?*

NAFCU believes that CDFIs should have at least *some* loans originated every year in order to be considered a financing entity.

10. *Should transactions with affiliates be considered arms-length transactions for purposes of meeting the financing entity criteria? How should an "arms-length transaction" be defined?*

NAFCU believes that the Fund should not consider any transactions with affiliates, arms-length or otherwise, as counting toward the financing entity criteria. As discussed above, such options provide opportunities for evasion and "gaming" of eligibility criteria.

11. *Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not?*

So long as transactions between affiliates do not count toward the financing activity threshold, NAFCU does not believe that the Fund needs to examine the amount and types of lending arrangements between affiliates.

12. *How should the CDFI Fund determine what is included in "similar financing activities" when defining "Financial Products?"*

NAFCU believes that "similar financing activities" should include checking accounts, savings accounts, and other financial services that enable individuals to achieve overall financial health.

D. Serves an Investment Area/Targeted Market

1. *Is the current standard that 60 percent of a CDFI's Financial Product activities must be in qualified Target Markets the right standard?*

NAFCU believes that the current 60 percent standard is an appropriate measure to demonstrate an applicant's commitment to a target market. It shows that the majority of an applicant's activity is dedicated to a target market.

2. *Should there be different thresholds for different institution types? (i.e., insured depository institutions, nonprofit loan funds, venture capital funds?)*

For equitable reasons, NAFCU believes that the 60 percent threshold should be applied to all institution types.

3. *Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?*

NAFCU believes that the current methodology for demonstrating service to target markets is satisfactory.

4. *CDFI Fund does not currently have a method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured?*

Unlike unregulated or non-depository institutions, credit unions offer many financial services in addition to traditional financing that are not currently considered by the Fund as a way to meet Target Market service requirements. For example, many individuals in a Target Market are only able to obtain a savings or checking account at a credit union, yet the Fund does not attribute those services toward the Target Market test. Savings and checking accounts are crucial channels to mainstream banking that are fundamentally required for individuals seeking to achieve financial health. NAFCU strongly urges the Fund to include checking and saving accounts in its Target Market calculations.

Further, NAFCU believes that requiring both an organization's dollar amount of financing activity *and* number of financial transactions is too strict of a requirement. Not only is that requirement not statutorily mandated, but NAFCU advocates that such a standard does not adequately take into account the type of consumer that these organizations are dedicated to serving. Many of the transactions from Target Market consumers are much smaller in dollar size than a typical transaction from a non-Target Market consumer.

As such, while an institution may be able to meet the 60 percent threshold for number of transactions, it might become difficult to meet the same dollar amount threshold. For example, small dollar loans are much smaller than car loans and mortgages. As a result, even though a credit union might originate a very high number of small dollar loans, the total dollar percentage might not reflect that activity. As such, NAFCU strongly urges the Fund to consider an organization's percentage of *either* the dollar amount of loans *or* the number of loans made to Target Market consumers.

5. *Is it appropriate to continue considering an Applicant's most recent fiscal year in determining whether it meets the threshold test, or should a longer period be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?*

NAFCU believes that the Fund should consider an Applicant's portfolio of loans outstanding in addition to loans newly originated for the most recent fiscal year. Taken alone, year-to-year variations in loan originations are not indicative of a change in an organization's priorities. Narrowly considering one-year's worth of data could unfairly punish an organization for events that are largely out of their control.

6. *Should CDFI Fund change the way it defines Investment Areas (ie., poverty rate greater than 20%; MFI at 80% or below; unemployment at 1.5 times national average). Units include counties, census tracts, and Indian Reservations.*

NAFCU believes that the Fund's current definition of Investment Areas is satisfactory.

7. *Should CDFI Fund continue to allow investment areas to be partially composed of individual units that do not qualify as investment areas, or should all units within investment area meet required qualifications?*

NAFCU urges the Fund to permit both contiguous investment areas and non-contiguous investment areas.

8. *Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?*

NAFCU believes that the Fund should accept additional objective methodologies for LITP classification, such as NCUA low-income classification, as well as branch locations and marketing targets.

9. *CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?*

NAFCU is not opposed to permitting CDFIs to be approved to serve such Target Markets nationally.

10. *Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments?*

Since it may be difficult to originate loans in every state, every year, NAFCU believes that the Fund should also consider currently outstanding loans despite the fact that they were originated in preceding years. Additionally, purchased loans that were not originated by the CDFI should also be able to count toward this threshold.

11. *Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these practices as constituting a national Target Market?*

NAFCU believes that any CDFI with transactions of outstanding loans in more than 25 states should be eligible for a national Target Market designation.

E. Development Services

1. *Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?*

NAFCU believes that the current definition of Development Services is sufficient, but we urge the Fund to consider a credit union's Call Report in satisfaction of these services. This would help alleviate some of the burden included in a credit union's reporting requirements.

2. *Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service?*

As this would create a unneeded burden, and could actually incentivize CDFIs to *not* develop additional financial products and financial services, NAFCU strongly urges the Fund to not develop such a new requirement.

3. *Should a certified CDFI be required to offer each Development Service each year to maintain certification status?*

The Fund should maintain flexibility in the type of Development Service offered, and should allow the CDFIs to innovate and meet their consumers' needs as they deem appropriate.

F. Accountability

1. *What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, i.e. governing vs. advisory boards?*

NAFCU believes that the Fund should require a majority of an applicant's Board members to be representative of the CDFI Target Market.

Additionally, because only credit union members are eligible to become Board members, every credit union Board of Directors is made up of the very people that the credit union serves. Further, Board members are voted on by the members of the credit union, with each member receiving one vote, regardless of total deposits. This 'one member, one vote' nature makes credit unions unique, and NAFCU argues that this structure makes credit unions implicitly accountable to their members and target market. Therefore, NAFCU believes that credit unions should not need to separately demonstrate accountability through Board structure to the Fund, as such requirements are already monitored and enforced during routine examinations.

2. *Is representation on an advisory board sufficient to demonstrate accountability?*

NAFCU feels that an advisory board does not hold a binding level of authority over an organization's direction, and therefore, the Fund should no longer permit advisory boards to count toward demonstrating accountability.

3. *Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?*

NAFCU believes that board membership is still the best way to demonstrate accountability. Because credit union boards are limited to credit union members, NAFCU believes that credit union accountability is baked into the structure of credit unions, and should be presumed to meet accountability standards without further documentation.

4. *Is a business plan and a stratified, statistically significant random sample of lending by asset class and location sufficient to document accountability? Under what circumstances?*

NAFCU believes that business plans and lending activity do not demonstrate accountability, but rather demonstrate activity. Accordingly, such documentation is not an appropriate factor to consider an organization's accountability.

5. *Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how?*

NAFCU believes the current standards are appropriate.

6. *How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (e.g., small businesses, micro businesses, and affordable housing developers, charter schools), but whose "end-beneficiaries" are?*

While NAFCU believes that such activity is appropriate to demonstrate compliance with the 60 percent Target Market activity threshold, we do not feel that accountability can be demonstrated by assessing an organization's lending or investment activity. Accountability is separate from activity.

7. *How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? In this context, how should the term "local" be defined?*

NAFCU believes that accountability standards for a national Target Market could be met if the organization's governing board has representation throughout the country. Board subcommittees could focus on ensuring that the organization is still held accountable to national Target Market interests.

8. *How should an Applicant that utilizes a web-based lending platform, especially one that serves a national Target Market, demonstrate accountability?*

Again, NAFCU feels that lending activity is a factor toward accountability, but is not sufficient.

G. Non-Governmental Entity

1. *Are the current standards for establishing that an Applicant is not owned or controlled by a governmental entity sufficient?*

They are not satisfactory, but are redundant for credit union applicants. As we have noted above, federally-insured credit unions cannot be governmental entities. Evidence of this should not be required from federally-insured credit unions. NAFCU urges the Fund to provide credit unions presumptive compliance with this requirement and not require further evidence.

2. *Are there additional or alternative questions and/or documentation the CDFI Fund should require to determine if an Applicant is an agency or instrumentality of a Federal, State or local government?*

NAFCU is not aware of situations that warrant further documentation or alternative questions.

II. <u>Certification Policy and Procedures</u>

A. *Should the CDFI Fund request information on the reason for applying for certification and intended use (e.g., funding requirement, marketing)?*

NAFCU does not believe that such a requirement is necessary and would actually increase burden without providing much benefit or insight.

B. *Are there additional sources of data collected by other federal agencies that can be used to meet any of the seven certification tests? If so, please describe.*

Yes – NAFCU believes that NCUA data is a valuable resource for the Fund to leverage when considering credit union applicants, and NAFCU urges the Fund to rely on such information when determining whether an applicant meets all required criteria. This would be immensely beneficial and time-saving for credit union applicants. Otherwise, much of the information provided in the CDFI application is viewed as duplicative and wasteful. NAFCU recommends that the Fund collaborate with the NCUA on ways to leverage data already collected through the agency's routine course of business.

III. <u>General Questions for Public Comment</u>

A. *"Community-based" is a term often used to describe CDFIs. How should "community-based" be defined and what does it mean for CDFIs to be "community- based?"*

NAFCU believes that entities should only be considered to be "community-based" if they are owned and governed by members of the community. This interpretation of "community-based" meets all the statutory requirements, while weeding-out those entities that might have a geographic location in, and services to, a Target Market, but are not truly community-based and are not community operated.

B. *Although not defined in statute, the CDFI Fund allows Applicants that serve Native communities to self-designate themselves as Native CDFIs and apply for Financial*

Assistance and Technical Assistance through the Native CDFI Program. Applicants that self-designate as a Native CDFI must attest to providing 50 percent or more of their products and services to Native lands or Native populations. Should the CDFI Fund continue to allow Applicants to self-designate as Native CDFIs or should there be more defined standards that the CDFI Fund should verify? If so, what should they be?

NAFCU is not aware of any current challenges; we have no recommendations on this matter.

C. *Should CDFIs be allowed to be composed of multiple legal entities (Subsidiaries and/or Affiliates)? And if so, must a CDFI include all of its Subsidiaries and/or Affiliates for consideration?*

NAFCU does not believe that all affiliates of a CDFI need to be certified as CDFIs, themselves. Such a requirement would discourage viable applicants from seeking certification. However, NAFCU does not believe that subsidiary activity should necessarily count toward parent activity, and vice versa.

D. *Should CDFI certification standards have more "bright-line" tests, i.e. specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?*

NAFCU believes the current process is satisfactory and no changes are recommended at this time.

E. *In addition to earlier questions regarding potentially different Primary Mission or Target Market standards based on institution type, are there other CDFI certification criteria standards that should vary based on institution type or the type of CDFI?*

NAFCU strongly believes that, given their unique nature among all CDFI entities, credit unions should be given presumptive relief from having to demonstrate the following criteria: primary mission; legal entity; financing entity; accountability; and non-governmental entity.

F. *Should "start-up" entities be able to be certified? How should the term "start-up" be defined?*

NAFCU does not see any cause to prohibit "start-ups" from becoming certified.

G. *Are there additional areas of CDFI certification policy or the CDFI certification application review process that could use improvement? If so, how?*

NAFCU greatly appreciates the streamlined application that the Fund developed in coordination with NCUA. We ask that those benefits be conferred as a default for all interested, low-income credit unions, as many of the streamlined benefits leverage intrinsic characteristics that are present in such credit unions.

From: Anne Pasmanick [mailto:apasmanick@nalcab.org]
Sent: Friday, March 10, 2017 11:51 PM
To: CDFIHELP <C2@cdfi.treas.gov>
Cc: Hart, Chantal <HartC@cdfi.treas.gov>; Noel Poyo <npoyo@nalcab.org>
Subject: [EXTERNAL]FW: please review and reply. I will clean this up and send asap.

Dear Mr. Meyer,

I sent you the wrong version of Mr. Poyo's comments on the CDFI Fund certification process. Please use this for your records instead.

I apologize for the inconvenience. Again, we appreciate the opportunity to comment and look forward to working with you and the CDFI Fund.

Thank you,

Anne Pasmanick

Anne Pasmanick
Director of Public Affairs
NALCAB-National Association for Latino Community Asset Builders
Office: 202-236-7971
NALCAB.org

1. Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate an Applicant's primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund provide a more explicit, possibly quantitative, definition of what it means to "promote community development" that Applicants would be required to meet? If so, what should be the definition and what test should be applied? Are there criteria that the CDFI Fund should not consider and why?
   NALCAB supports a more prescriptive primary mission test to evaluate both the applicant's capacity to serve its target market and the impacts of its community development work on the target population. An applicant should be able to demonstrate:
   - Knowledge of the specific debt and capital needs of the target population
   - Understanding of the capital market availability and dynamics in the geographic area
   - Cultural and linguistic alignment with the target population
   - Plan and ability to market and deliver services to the population.

A definition of "promote community development" should include the range of activities that increase access by communities to financial services in support of economic development and mobility, including:

- Small business development
- Housing related services
- Financial capability to access and manage financial resources

2. What evidence can the CDFI Fund use to confirm an Applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose actions do not demonstrate intent to create community development and/or are predatory in nature?
   As one of several options, the CDFI Fund can review the applicant's ~~provide their~~ organizational strategic plan to evaluate how it aligns with their community development programming and where they stand on their timeline for delivering these programs and services. Applicant's should be able to provide data and testimonials from members of the intended target population regarding lending, investments, financial education and support services in addition to their methodology for conducting an analysis of the deployment of funds by grantees to measure the extent to which the CDFI Fund is addressing the ethnic/racial wealth gap by equitably investing in communities of color. This data should play a significant role in determining an applicant's impact in low-income, immigrant and communities of color. Documented marketing and community engagement methods would also be a valuable source of documentation.
   To what extent should the CDFI Fund evaluate the Financial Products and/or Financial Services offered by an Applicant to determine its ability to meet the primary mission test? What test would the CDFI Fund apply in any such evaluation of Financial Products and/or Financial Services?
   Financial products provided to the target populations by applicants should be based on a documented market demand, ~~need~~ should be underwritten based on ability to pay and should be designed to provide greater access for low- and moderate-income populations as compared to what is already available in the target market. Currently, by statute, Depository Institution Holding Companies wishing to be certified as CDFIs must provide documentation that their parent, Subsidiaries, and Affiliate organizations collectively meet the primary mission test. Should the CDFI Fund also make this a requirement for Non-Regulated CDFIs, for example, a Non-Regulated for-profit financial institution? Why or why not?
   Yes, all applicants should be held to the same standards and requirements, which should include parent, subsidiary and affiliate organizations.

C. *Financing Entity:* Insured Depository Institutions and Credit Unions are deemed to automatically meet this criterion. Non-Regulated CDFIs must demonstrate that they engage in direct financial activity (*e.g.,* the provision of Financial Products, Financial Services, and Development Services) as reflected on financial statements and executed notes, and must dedicate a predominance of their assets to Financial Products, Development Services, and/or similar financing.

The CDFI Fund does not currently define the term “predominance,” but in practice accepts a plurality of assets as meeting this criterion. Should the term “predominance” be defined more specifically, and if so, how?

Experience by the applicant in providing these financial services, development services, lending and education may be a more relevant test that whether a preponderance of funds are applied for those activities. It should certainly be one factor in the CDFI’s consideration of a certification application.

2. Should entities that provide less than a plurality of financing activity ever be considered Financing Entities? If so, under what circumstances and is there a minimum level of activity that should be required?

Entities that provide less than a plurality of financing activity should be considered Financing Entities if they have a reasonable plan for growing their financing activities or if they are uniquely positioned to serve an underserved market segment.

3. Currently, the amount of assets and staff time dedicated to financing activities are used to measure the level of a CDFI's financing activity. How else could a CDFI's level of financing activity be measured?

Primary -

4. For Non-Regulated CDFIs, is the current “predominance of assets” test appropriate, or should alternatives or additional considerations be permitted?

5. Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI's financing activities?

To the extent that the Subsidiary is furthering the charitable purpose of an unregulated, non-profit CDFI, the subsidiary’s financing activity should be considered.

6. Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities?

7. Should an organization applying for CDFI certification be required to transact a minimum number or dollar amount of loan or equity investments to be considered a financing entity? Should the Applicant be required to have at least one or more years of loan or equity investment origination? If so, what should those rules be?

8. Should an organization that only services loans or Equity Investments or has very few transactions be considered a financing entity?

That organization may be impacted by a variety of factors that inhibit transactions but continuous service in the marketplace is what makes a CDFI impactful and relevant. When CDFIs fail to serve their market continuously they can lose touch with market needs and dynamics.

9. Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status?

10. Currently, non-arms-length transactions do not contribute to meeting the financing entity criteria. For example, transactions made with Subsidiaries and/or Affiliates are not considered to be arms-length transactions. Should some transactions with Affiliates be permissible as evidence of an organization being a financing entity? If so, which ones? How should an “arms-length transaction” be defined?

11. Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not?

12. Current CDFI Program regulations use the term "similar financing activities" in its definition of the term "Financial Products." How should the CDFI Fund determine what is included in "similar financing activities?"

D. *Serves an Investment Area or Targeted Population:* Applicants for certification must identify the Investment Area(s) and/or Targeted Population(s) they intend to serve as their Target Market.

1. Threshold Target Market Test: Although no threshold level of service is indicated in the statute or regulation, current CDFI Fund policy requires that an organization must serve at least one eligible Target Market and must direct at least 60 percent of its Financial Product activities to one or more eligible Target Market to qualify for certification. In general, both the number and dollar amount of the organization's Financial Product activities should be at least 60 percent of its Financial Product activities in the most recent fiscal year. If an organization does not meet the 60 percent threshold in terms of either number or dollar amount of transactions (but not both), the organization can Start Printed Page 2253provide an argument as to why the figure is less than 60 percent and the CDFI Fund reserves the right to accept or reject the explanation.

a. Is the current standard that 60 percent of a CDFI's Financial Product activities must be in qualified Target Markets the right standard? If not, what percentage of transactions should be in and/or to a qualified Target Market to demonstrate that an organization serves that Target Market and why?

The current 60% threshold is reasonable in part because it requires a CDFI Fund to keep serving their targeted community and/or populations. We propose that if a Fund falls below the threshold that it be given one year to recalibrate and catch up to the required level.

b. Should there be different thresholds for different institution types (*i.e.,* Insured Depository Institutions and Credit Unions, nonprofit loan funds, and venture capital funds)?

c. The CDFI Fund currently relies on self-reported summary data submitted by Applicants to demonstrate that they meet the Target Market threshold test. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?

Meeting a required baseline of activity is important but the lens of the Fund in considering applications should be to advance opportunities for access to capital in capital-starved communities. This requires readers who know capital markets in regions across the country and understand how these different financing entities work.

d. The August 31, 2015 Interim CDFI Program Regulations added the provision of Financial Services as a means of demonstrating that an applicant serves a Target Market. However, the CDFI Fund does not currently have a method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured? If an Applicant requests credit for providing

Financial Services, should there be a separate minimum level of Financial Products that must be provided by the Applicant?

e. The CDFI Fund currently first considers an Applicant's financial activity during its most recent fiscal year in determining whether it meets the threshold test. Is this the appropriate time period to consider, or should a longer period of time be considered? If so, should the applicant be required to meet the threshold in each year of the test, for a time period, or should an average be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?

2. Investment Areas: The statute requires that an Investment Area must meet at least one of the economic distress criteria (poverty rate greater than 20 percent; Median Family Income (MFI) at 80 percent or below specific MFI benchmarks; unemployment rate 1.5 times the national average) and has significant unmet needs for Financial Products and Services, or is wholly located within an Empowerment Zone or Enterprise Community.

a. The CDFI Fund's current practice is to define Investment Areas that are composed of one or more units of geography that meet certain distress criteria. Units include but are not limited to counties, census tracts, and Indian Reservations. Should the CDFI Fund change this practice? If so, how?

Our experience informs us that communities of color are left behind and disproportionately impacted by the Great Recession. The CDFI Fund should weigh the unmet capital needs in Latino communities and the experience of Latino led community development groups in making certification decisions.

b. Currently the CDFI Fund allows Investment Areas to be composed of a set of contiguous geographic units that may include a small portion of units that individually do not qualify as Investment Areas. Should the CDFI Fund continue this practice, or should all units within the Investment Area meet the Investment Area qualifications?

3. Targeted Populations: Targeted Populations include Low Income Targeted Populations (LITP) and Other Targeted Populations (OTP) for a specific geographic unit. LITP, for a specified geographic unit, by statute includes individuals whose family income (adjusted for family size) is 80 percent of the area MFI (for metropolitan areas). LITP in non-Metropolitan Areas is the greater of 80 percent of the area MFI; or 80 percent of the statewide non-Metropolitan Area MFI. The CDFI Fund currently includes, for a specific geographic unit(s), African-Americans, Hispanics, Native Americans, Native Alaskans, Native Hawaiians, and Other Pacific Islanders among the groups automatically considered eligible for an OTP Target Market. Applicants are permitted to seek OTP recognition for other populations by demonstrating that the group lacks access to capital.

a. Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?

b. CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?

3. National Target Markets: Currently, in order to be certified with a Target Market national in geographic scope, CDFIs need to show that they have conducted their financing activities broadly across the variously defined regions of the country, (*e.g.* Northeast, West, Midwest, South, Southeast, etc.)
4. Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments?

b. Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these practices as constituting a national Target Market?

E. *Development Services:* A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. Development Services means activities undertaken by a CDFI, its Affiliate or contractor 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. For example, such activities include, but are not limited to, financial or credit counseling; homeownership counseling; and business planning and management assistance.

Dev services are those that help a target group, including small business, how to access mainstream capital and manage their loans, funds and investments. Fin educa, housing counseling, housing rpeservation, accounting.

1. Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?

Yes, development services should be defined as those that make communities better able to access and manage loans and capital in support of operating small businesses and creating and providing access to affordable housing.

2. Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service?

No, the services should correspond to the specific market served.

3. Should a certified CDFI be required to offer each Development Service each year to maintain certification status?

F. *Accountability:* The CDFI Fund currently requires that a CDFI maintain accountability to its Target Market through representation on its governing board and/or advisory boards. Prior to recent changes in the regulation, a CDFI could demonstrate accountability through other mechanisms such as focus groups, community meeting, and/or customer surveys.

1. What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, *i.e.*governing vs. advisory boards?

51% of board should be accountable to the target market. Advisory boards lack the authority to govern and are therefore not as significant in ensuring organizational accountability.

2. Is representation on an advisory board sufficient to demonstrate accountability?

3. Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?

Service to community ~~should be the primary~~ could be an additional measure for demonstrating accountability.

4. Is a business plan and a stratified, statistically significant random sample Start Printed Page 2254of lending by asset class and location sufficient to document accountability? Under what circumstances?

5. Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how?

6. How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (*e.g.,* small businesses, micro businesses, and affordable housing developers, charter schools), but whose "end-beneficiaries" are?

An intermediary lender can make loans to target markets if they can connect their service all the way through to the Small Business or target market to be served. The Fund needs to study and assess the effectiveness of the national intermediary Funds in meeting this goal.

7. How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? In this context, how should the term "local" be defined?

8. How should an Applicant that utilizes a web-based lending platform, especially one that serves a national Target Market, demonstrate accountability?

G. *Non-Governmental Entity:* By statute, a CDFI Shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. In the CDFI Certification application, the Applicant must respond to a series of questions designed to surface/discover issues or circumstances that may prevent an Applicant from meeting this criteria.

1. Are the current standards for establishing that an Applicant is not owned or controlled by a governmental entity sufficient?

2. Are there additional or alternative questions and/or documentation the CDFI Fund should require to determine if an Applicant is an agency or instrumentality of a Federal, State or local government?

II. Certification Policy and Procedures

A. Should the CDFI Fund request information on the reason for applying for certification and intended use (*e.g.,* funding requirement, marketing)?

Goals for certification may change over time but establishing a rationale is reasonable and appropriate.

B. Are there additional sources of data collected by other federal agencies that can be used to meet any of the seven certification tests? If so, please describe.

III. General Certification Questions for Public Comment: Through This RFI, the CDFI Fund Invites Comments and Responses to the Following Questions Regarding CDFI Certification

A. “Community-based” is a term often used to describe CDFIs. How should “community-based” be defined and what does it mean for CDFIs to be “community-based?”
   Community-based should reflect an expectation of a Fund’s responsive to a local community and board representation.
B. Although not defined in statute, the CDFI Fund allows Applicants that serve Native communities to self-designate themselves as Native CDFIs and apply for Financial Assistance and Technical Assistance through the Native CDFI Program. Applicants that self-designate as a Native CDFI must attest to providing 50 percent or more of their products and services to Native lands or Native populations. Should the CDFI Fund continue to allow Applicants to self-designate as Native CDFIs or should there be more defined standards that the CDFI Fund should verify? If so, what should they be?
   Yes, this designation is vital and should continue.
C. Should CDFIs be allowed to be composed of multiple legal entities (Subsidiaries and/or Affiliates)? And if so, must a CDFI include all of its Subsidiaries and/or Affiliates for consideration?

D. Should CDFI certification standards have more “bright-line” tests, *i.e.* specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?

E. In addition to earlier questions regarding potentially different Primary Mission or Target Market standards based on institution type, are there other CDFI certification criteria standards that should vary based on institution type or the type of CDFI?

F. Should “start-up” entities be able to be certified? How should the term “start-up” be defined?

G. Are there additional areas of CDFI certification policy or the CDFI certification application review process that could use improvement? If so, how?

fund consulting LLC

Mr. David Meyer
Certification, Compliance Monitoring and Evaluation (CCME) Manager
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Comments on CDFI Certification policies and procedures

March 10, 2017

Dear Mr. Meyer,

Since its inception, FUND Consulting has assisted CDFIs with the completion and submission of over 180 CDFI Certification and Recertification applications. Additionally, the firm has supplemented the efforts of over 300 CDFIs through the completion of strategic and capitalization plans, research and impact projects, funding applications, and compliance.
With insight from this direct work in the CDFI industry for the past 17 years, FUND Consulting respectfully submits the following comments on the CDFI Certification policies and procedures.

Legal Entity
Currently, FUND Consulting's experience has found the establishing documents requested by the CDFI Fund sufficient in demonstrating an entity as a legal business. However, FUND Consulting recommends the CDFI Fund incorporate questions that require an Applicant to disclose any recent legal proceedings to allow the CDFI Fund to conduct further due diligence on the eligibility/appropriateness of CDFI Certification for applying entities.

Primary Mission
In addition to the CDFI Fund's current requirement of board-approved documentation and a narrative statement to demonstrate a community development mission, FUND Consulting recommends the CDFI Fund:

- Request information on the rate and fees of an Applicant's product and services to ensure non-predatory lending. While the CDFI Fund currently requests short descriptions of an Applicant's products and services as part of the Primary Mission tables and narrative, requiring specific information on the product's terms and structure will allow the CDFI Fund to assess whether products and the Target Market align with mission.
- Not implement different standards for different organization types. FUND Consulting believes that all institution types should be required to adhere to the same standards.

Requiring all Applicants to meet the same standards for Certification inherently results in all entities demonstrating their commitment to and capacity to be a CDFI, regardless of tax status or structure.

- Require all applicants to submit information on the primary mission of affiliate entities. However, FUND Consulting does not recommend the CDFI Fund require all affiliated entities to have a primary mission of community development. The review of the affiliate entities' missions should be subjective as often times a family of entities can complement each other's products and services without each having a similar mission. For example, many for-profits choose to create an affiliate through which it is able to focus its more missions driven work. This structure often allows a family of entities to maximize the resources available to each entity and to the Target Market. By not requiring all affiliates to share a mission, the CDFI Fund will have the flexibility to consider the many different and innovative structures evolving in response to community and environmental changes.

Financing Entity

FUND Consulting agrees with the CDFI Fund's current policy of Insured Depository Institutions and Credit Unions automatically meeting this criterion based on the inherent structure and regulations of these entities. In regard to non-regulated CDFIs, FUND Consulting recommends the CDFI Fund:

- Provide broader criteria than solely relying on a plurality of assets to determine if an organization meets the Financing Entity test. This recommendation will allow the CDFI Fund more flexibility in determining the eligibility of an organization that primarily provides small dollar loans or offsets its higher risk lending with other activities. In these instances, FUND Consulting recommends the CDFI Fund consider the whole business model in determining the entity's ability to meet the Financing Entity requirement.
    - Often times organizations working with the lowest income borrowers provide small dollar consumer loans in line with the capacity of the borrower. These loans are vital to the ability for the borrower to build their credit and financial acumen. At the same time, for the organization it can often be difficult to show a predominance of assets dedicated to these activities even if the volume of lending is high due to the low dollar amount and shorter terms associated with this type of lending. In such and other similar instances, organizations may choose to offset the higher risk nature of their lending with non-financing activities as part of their risk management policies. In addition to offsetting risk, non-financing activities often also result in increased capacity for the organization through revenue generation, critical to an organization as working

with underserved borrowers often requires considerable staff and financial resources with low returns. The current requirements at times lead organizations to create a separate entity with shared staff to meet the Certification requirement, which requires significant resources.

- Require applying organizations have a one full year of loan or equity investment activity at a minimum to be considered a financing entity. FUND Consulting does not recommend the CDFI Fund institute a minimum number or dollar amount of activity in order for an organization to meet the requirement in order to allow for organizations of all sizes to achieve certification.
- Allow organizations to meet the Financing Entity requirement through loan servicing activity, if the organization also engages in direct lending or investments. However, FUND Consulting does not recommend allowing for organizations that only engage in loan servicing for other entities to meet the Financing Entity requirement as the organization is not assuming any of the risk involved.
- Maintain the current requirement that CDFIs offer loans or equity investments each year in order to maintain certification.
- Require applicants to disclose information on lending to affiliates and insiders as a means for the CDFI Fund to collect information on and assess an organization's quality controls. At the same time, FUND Consulting recommends the CDFI Fund continue with its current practice of this type of activity not counting towards an applicant's ability to meet the financing entity criteria.

<u>Serves an Investment Area or Targeted Population</u>

In regards to the Threshold Target Market Test: FUND Consulting recommends the CDFI Fund:

- Adjust the threshold for meeting the Target Market test to be in line with the requirement for meeting the Financing Entity Test and being a Native CDFI: a minimum of 51%. Doing so would also put the requirement in line with that to become a Low-Income Designated Credit Union. In addition to streamlining standards among tests and agencies, this will provide organizations additional flexibility in offsetting high risk lending and generating revenue to cover the resources required when working with underserved borrowers, as previously described.
- Maintain its current practice of having the same standards for all institution types to ensure equity and consistency. The CDFI Fund may consider however implementing different standards by Target Market type. For example, as those serving Low Income Targeted Populations often engage in small dollar lending and experience the highest level of risk that would need to be accounted for, the CDFI Fund may consider

implementing different minimum thresholds for those serving Low Income Targeted Populations.

- Continue its practice of relying on self-reported data to demonstrate an organization meets the Target Market threshold test. Currently, the CDFI Fund requires an organization to evaluate its full set of lending for the most recent year and current year in order to determine an appropriate Target Market. At this time, this standard is easy for any applicant to understand and undertake. Requesting a statistical sampling of transactions can result in varied processes that may lead to inaccuracies. Alternatively, the CDFI Fund could request further documentation on how the Target Market data was derived in instances where it is concerned about the validity of data submitted. Additionally, the CDFI Fund may consider implementing random annual audits of CDFIs to verify Target Market lending.
- Utilize the same standards for assessing if financing activities are to one or more Target Market for Financial Services activities. At the same time, FUND Consulting recommends the CDFI Fund not require this data for all applicants if the applicant does not elect to utilize the standard towards meeting the Target Market threshold. Currently, this information is required of all regulated institutions but can prove burdensome and misrepresentative as 1. The volume of accounts for which address, income, and other data is required to be assessed is typically high for regulated institutions 2. The CDFI Fund currently only requests information on the dollar amount of Financial Services to the Target Market, which is typically low when working with underserved populations. Requiring information on the number of Financial Services recipients in the Target Market would provide a more holistic view of the entities activities. Along these lines, for non-regulated applicant's, the CDFI Fund should allow for organizations to utilize data on Financial Services such as Individual Development Accounts towards meeting the Target Market threshold.
- Standardize the years for which data is requested across programs. As such, FUND Consulting recommends the CDFI Fund consider requesting organizations to assess data and provide averages for its most three recently completed fiscal years. This would also provide the CDFI Fund a more thorough picture of an organization's long-term Target Market activities, further demonstrating the applicant's ability to meet the Target Market Test. This will also allow for applicants to account for years in which there may have been anomalies in activities due to the local environment. Once certification is achieved, the CDFI Fund can assess the most recent year's activities in a CDFI's ability to maintaining certification, but should also allow for atypical variances that often occur in changing environments.

- Not require full portfolio information as it will add to the applicant burden, especially for the high volume lenders. Additionally, portfolio data based on the organization's current Target Market would not account for shifts in Target Markets over the years.
- Provide specific guidelines on how intermediaries should assess their ability to meet the Target Market test.

In regards to Investment Areas, FUND Consulting recommends the CDFI Fund:

- Maintain its current practice of defining Investment Areas as composed of one or more units of geography that meet certain distress criteria.
- Continue with its current practice of allowing Investment Areas be composed of a small portion of unqualified units. As Investment Areas are required to be contiguous, not allowing a small portion of unqualified units within an Investment Area may preclude many organizations from being able to create a qualified Investment Area due to the inherent nature of geographies being varied.
- Consider identifying distress criteria specific for rural areas as it can be difficult at this time for rural areas to meet the Investment Area criteria due to low population.

In regards to Targeted Populations, FUND Consulting recommends the CDFI Fund:

- Expand Targeted Populations to accept additional Other Targeted Populations including: women, veteran, and disabled populations which are all recognized by other federal program as underserved populations.
- Approve Targeted Populations nationally. As the CDFI Fund's approved Other Targeted Populations and Low Income Targeted Populations are documented to be underserved in all markets, geographic restrictions may negatively affect a CDFI's ability to meet the Target Market threshold.
- Provide specific guidance on how those serving small businesses can elect a Low Income Target Market. Currently, Low income Targeted Populations is based on the borrower income. However, for organizations serving small businesses, the business owner's income may not be representative of the business' activities. Consider aligning the Low Income Targeted Populations criteria for small businesses with that of the NMTC program by allowing for businesses located in, serving, and/or primarily hiring low-income populations to meet the criteria.

In regards to National Target Markets, FUND Consulting recommends the CDFI Fund:

- Formally define regions within the U.S. that an organization can demonstrate it serves in order to meet national certification, as serving each state may not be feasible for organizations. By demonstrating an organization serves each of the pre-defined regions, it will be able to demonstrate that it works across the U.S.

Development Services

FUND Consulting recommends the CDFI Fund continue with its current standards for Development Services. Requiring organizations to provide a formal development service corresponding to each of its lending products will eliminate an organization's ability to be flexible in meeting the needs of its Target Market. Often times, the development services offered to a borrower are catered to their personal needs as opposed to a CDFI's defined offerings.

Accountability

In regards to Accountability, FUND Consulting recommends the CDFI Fund implement more flexibility across the board:

- Maintain its current practice of allowing Advisory Boards to demonstrate Accountability. However, the CDFI Fund may consider providing different accountability thresholds for Governing Boards and Advisory Boards. As a Governing Board holds various responsibilities, it may not be feasible for a substantial majority of the Board to be accountable to the Target Market. However, as Advisory Boards are typically created to provide input on products and services, it is reasonable a higher percentage of an Advisory Board would be accountable to the Target Market. Should there be concerns of an Advisory Board's ability to provide feedback from the Target Market, the CDFI Fund may consider requiring minutes from Advisory Board meetings be submitted.
- Reconsider allowing organizations to meet accountability through Focus Groups and Surveys. In both situations, the CDFI Fund should include specific requirements on frequency and audience of Focus Group meetings and Surveys. The CDFI Fund could consider allowing a CDFI able to demonstrate that Focus Groups and/or Surveys are conducted with populations representative of the Target Market at least annually to meet the Accountability requirement.
- Allow bankers and other business employees to count towards accountability if they are able to demonstrate they work directly with the Target Market. Currently, non-CDFI bankers are excluded from meeting accountability however often times these are the people working directly with borrowers that are unable to meet the bank's credit criteria and therefore make referrals to CDFIs. Working directly with these borrowers provides bankers unique insight into the needs of this population. Additionally, currently only owners of for-profit businesses count towards accountability however employees of for-profit businesses are often times the ones directly working with the low-income populations served by the business. As such, the CDFI Fund may consider allowing bankers and employees of for-profit businesses to demonstrate Accountability.

- Align Accountability for those seeking national certification with the earlier recommendation of formally defining regions within the U.S. By demonstrating Accountability to each of the defined regions, the organization will be able to demonstrate it has accountability across the U.S. The CDFI Fund may consider establishing separate minimum requirements when demonstrating Accountability by region that take into consideration the resources required to maintain a Board with representatives from across the country.
- Maintain its Accountability standards for all lenders, including those utilizing a web-based lending platform. Regardless of the platform used, organizations seeking CDFI Certification should be required to meet the same Target Market and Accountability standards to achieve Certification.

Non-Governmental Entity

At this time, FUND Consulting has no additional recommendations in regards to the requirement as our experience has found current criteria sufficiently allows for an organization to demonstrate it meets the Non-Governmental Entity requirement.

In summary, CDFIs FUND Consulting has worked with over the years appreciate the flexibility currently offered in the CDFI Certification criteria and recommends the CDFI Fund continue in this manner. Doing so will allow for the CDFI Fund to consider how different organizations with varied business models may all be working towards the goal of the CDFI Fund: support and invest in economically disadvantage communities and populations.

Sincerely,

Ruth E. Barber Lolita Sereleas Manjima Bose

Ruth Barber, Partner Lolita Sereleas, Founding Partner Manjima Bose, Partner

From: Tiwajopelo Dayo [mailto:todayo@mail.widener.edu]
Sent: Friday, March 10, 2017 11:57 PM
To: CDFIHELP <C2@cdfi.treas.gov>
Subject: [EXTERNAL]Comment CDFI Current Policies

To David Meyer

Thanks for allowing me the opportunity to comment.

- The current required board-approved documentation and narrative statement should not be sufficient to demonstrate that an Applicant's primary mission but rather the CDFI fund should include a requirement that is quantitative in nature. For example for an Applicant to qualified as a CDFI, they should generate more than 70% of income from its CDFI mission.

- The CDFI should require that a CDFI applicant demonstrate adherence to a stated community development mission by including a requirement of an independent audit to certify that the CDFI is operating in accordance to its community development mission.

- Under Section C.3 - In addition to amount of asset and number of staff dedicated to financing activities to measure financing level, activity, a suggestion will be to include a finance portfolio to total portfolio ration greater than or equal to 65%, as an additional measure of financing activity

Thanks for your audience an have a great day,

Jope Dayo.

March 10, 2017

David Meyer
Certification, Compliance, Monitoring and Evaluation Manager
CDFI Fund
cdfihelp@cdfi.treas.gov

Dear Mr. Meyer:

WBD, Inc. (WBD), a non-profit organization, was formed in 1981 and is designated as a certified development company (CDC) by Small Business Administration to originate SBA 504 loans. Over the past 35 years, WBD has made an economic development impact in Wisconsin by creating almost 64,000 jobs.

In 2010, WBD formed WBD Advantage Fund, LLC, (WBDAF) a wholly-owned subsidiary CDFI as a way to expand our economic development financing gap reach and meet SBA's requirement for CDCs to be actively involved in other economic development activities. WBDAF's mission is focused on job creation through SBA lending programs to remain aligned with our WBD mission.

WBDAF is designated as a SBA Community Advantage (CA) Lender and maintaining our CDFI certification is a SBA requirement. Lending to underserved markets is also a SBA CA requirement as follows: Lender must ensure that at least 60% of its CA loans are made to businesses in: (a) Low-to Moderate Income (LMI) communities (while not a specific requirement CA Lenders are encouraged to serve low and very-low income communities; (b) Empowerment Zones and Enterprise Communities; (c) HUBZones; (d) New businesses, e.g., firms in business for no more than two years; (e) businesses eligible for SBA Veterans Advantage; (f) firms where more than 50% of their full-time workforce is low income or resides in LMI census tracts; and/or (g) Promise Zones. SBA's compliance measurement is # of loans since program inception.

CDFI Fund has requested public feedback regarding the following:

1. How the primary mission test should be met

It appears the CDFI Fund application requirements that include have a primary mission of promoting community development is acceptable. In the case of WBDAF, our mission matches SBA mission of job creation.

2. What the criteria should be for serving Investment Areas and Targeted Populations

I do recommend that CDFI Fund consider allowing CDFIs to submit to CDFI Fund compliance I criteria that they want to be measured on based on requirements of the specific lending programs offered. For instance, the SBA CA loan program requirements mentioned above would be acceptable measurements for WBDAF. Complying with both SBA CA and CDFI Fund requirements adds complexity to the CDFI's operations.

3. How a CDFI should demonstrate accountability to its Target Market

CDFI Fund has designated WBDAF's target market as Investment Area even though the initial application was submitted to include Targeted Populations. As a state-wide organization, many communities in Wisconsin have different needs that are not included in the Investment Area designation. I would recommend that the CDFI Fund allow CDFIs to utilize all the available target market criteria vs assigning a specific target market to each CDFI. This would allow the CDFIs to expand their target market automatically when new opportunities surface.

The Investment Area Target Market does provide for significant unmet capital or financial services needs to be a qualifying criteria which has to be supported by narrative analysis. The unmet need criteria is important; however, I recommend that CDFI Fund consider more qualifiers, such as borrowers who are unable to obtain conventional bank financing due to not meeting standard lending guidelines such as lack of collateral or limited equity contribution.

Please feel free to contact me for further discussion on my comments.

Sincerely,

Wenda M. Roycraft

Wenda M. Roycraft
WBD Advantage Fund, LLC
wroycraft@wbd.org
(920) 966-1478

Meyer, Marcy-Ann

Subject: FW: [EXTERNAL]Comments on CDFI Certification

From: Merkowitz, Jeff
Sent: Tuesday, March 28, 2017 6:01 PM
To: Fishman, Brette <FishmanB@cdfi.treas.gov>; Dickens, Michelle <dickensm@cdfi.treas.gov>; Meyer, Marcy-Ann <MeyerM@cdfi.treas.gov>; Stever, Christopher <steverc@cdfi.treas.gov>
Cc: McInnis, Tanya <mcinnist@cdfi.treas.gov>
Subject: FW: [EXTERNAL]Comments on CDFI Certification

See additional comments at the bottom below. I've told anyone who has asked that we would accept late comments. Thanks.

Jeff

From: Bob Schall [mailto:Bob.Schall@self-help.org]
Sent: Tuesday, March 28, 2017 3:10 PM
To: Merkowitz, Jeff <MerkowitzJ@cdfi.treas.gov>
Cc: David Beck <David.Beck@self-help.org>
Subject: [EXTERNAL]Comments on CDFI Certification

Jeff:

When we saw each other in Charlotte the other week, I mentioned that Self-Help had some comments on the CDFI certification rules. We worked closely with the CDFI Coalition on its comments and support them. However, we think that there are two areas for change or improvement which are most important. Please feel free to contact David or I if you have questions.

Bob

Self-Help Ventures Fund
Robert Schall, President
Self-Help Ventures Fund
301 West Main Street
Durham, NC 27701
919.956.4434

SELF-HELP COMMENTS ON CDFI CERTIFICATION

B 4. To what extent should the CDFI Fund evaluate the Financial Products and/or Financials Services offers by an Applicant to determine its ability to meet the primary mission test?

We agree with the Coalition that the nature of the products offered by CDFIs is as important as to whom the products are provide. ***Entities that provide payday and other predatory financial products should not be eligible for CDFI certification*****.** All CDFIs should offer products that are likely to improve the financial condition of the borrower, and certainly should not be a product with outrageous fees or that is likely to put a borrower in a cycle high interest rate loan churning. We don't have a suggestion for how to implement this requirement, but with the proliferation of on-line and non-bank lending products the Fund must be wary of organizations that target low-income populations with products that are harmful to borrowers.

C 11. Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not?

*W*e agree with the coalition's comment and would like to add that ***CDFIs providing financing to other CDFIs should count as part of satisfying the Financing Entity test, regardless if it's a related entity.*** Some CDFIs are dedicated to providing financing to other CDFIs, and others provide financing to both non-CDFIs and CDFIs. As many CDFIs achieve some degree of scale they are able to obtain financing with low interest rates and/or flexible terms, which give them the opportunity to pass on these terms and provide competitive financing to other CDFIs. CDFI to CDFI financing assures the Fund that the ultimate use supports CDFI target market financing. In addition, CDFI to CDFI lending often permits the lending CDFI to leverage considerably more impact than it would through direct financing. CDFI to CDFI financing is an eligible use under the CDFI Bond program and should be considered a Financing Product that satisfies the Financing Entity test. Some larger CDFIs, like Self-Help provide financing to affiliate CDFIs that are related entities. In our case, the lending CDFI (Self-Help Ventures Fund) receives grants and low-interest rate loans explicitly to lend to a related entity CDFI (Self-Help Federal Credit Union) at preferential terms. These funds would not be made available to lend to non-related CDFIs because they are targeted explicitly to our affiliate CDFI. Furthermore the impact of these financings is equal to or greater than loans that would be made to non-related CDFIs because they are leveraged by the receiving CDFI. For these reasons CDFI to CDFI CDFIs financing should count towards satisfying the Financing Entity test without limit, to give CDFIs the ability to receive specialized funding and maximize community impact.

CDFI Certification Request for Information

Overview

On January 9, the CDFI Fund issued a request for information on the policies and procedures used to certify CDFIs. The CDFI Fund states in the RFI that it is conducting a holistic review of the certification tests to ensure they accurately reflect and assess the evolving diversity of CDFIs and the communities in which they serve. The CDFI Fund wants to ensure that CDFI certification accurately verifies an organization's commitment to a community development mission.

The CDFI Fund also notes in the RFI that the significance of CDFI certification has increased. Initially, CDFI certification was used exclusively as first stage screening tool for eligibility to certain CDFI programs. Only certified CDFIs could submit applications for funding, and additional and more detailed scrutiny of the applicant occurred after an application for funding was submitted. Over time, CDFI certification has been used by other federal agencies as a qualifier for access to certain federal programs and for regulatory relief from certain federal regulations. The CDFI Fund notes that this occurred even though the CDFI Fund does not act in a regulatory capacity.

When regulated institutions seek regulatory relief through certification, the principal concerns of the regulatory agencies would be that the entity seeking certification would be genuinely working to achieve the public goals that merit regulatory relief, and that the institutions seeking certification would carry out those activities safely, soundly, and ethically, in compliance with all applicable laws and regulations. In their commentary on the RFI, the CDFI Fund questions if their current procedures are up to the task.

The current certification process is heavily focused on self-reported prior activities in LMI communities and vague declarations of an organization's mission as a proxy for future expectations. The existing certification process does not use publicly available information generated in the supervisory process, such as CRA reports, enforcement actions, or violations of fair lending laws, to inform this analysis.

The regulatory relief offered through CDFI certification affects future rather than prior activity. The current certification process does not provide representations or warranties that activities that promote community development will be undertaken, that there is a process for internal and external stakeholders to hold the institution accountable for public goals being met, that activities will be conducted in a safe and sound manner, and that predatory or other illegal practices will not be used.

The regulatory agencies should work closely with the CDFI Fund on the certification process. The regulatory agencies can not only provide high-quality information and analysis in the process, but the partnership could also streamline the certification process so that the certification could be more widely and effortlessly achieved for the appropriate regulated institutions.

Analysis

CDFI certification uses seven tests:

1. Legal entity
2. Primary mission
3. Financing entity
4. Service to an investment area or targeted population
5. Development services
6. Accountability
7. Non-government entity

The most relevant tests of concerns are:

Primary Mission Test: Regulated financial institutions seeking certification meet this requirement by providing a board-approved document stating that the institution has a primary mission of promoting community development. The CDFI Fund defines promoting community development as activities that are "purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of economically distressed communities (which may include Investment Areas)."

Policy Mtg

The CDFI Fund asks in the RFI:

1. Should the CDFI Fund provide a more explicit, possibly quantitative, definition of what it means to promote community development?
2. Should there be different standards between nonprofit and for-profit organizations?
3. What evidence should the CDFI Fund use to confirm an applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission from one that targets the same communities and populations but whose actions do not create community development and/or are predatory?

Govt Actions - violations of fair lending laws.

The OCC community development bank charter was the OCC's attempt at standards that would warrant certain privileges in the regulatory environment for institutions with a primary purpose of community development, and it seems reasonable to use those standards as a starting point for determining how the OCC would independently evaluate this test:

Comm Dev Charter

> The bank's articles of association must indicate the express intent primarily to lend, invest, and provide services in the underserved communities in which it is chartered to conduct business.

Document how the bank's activities will primarily benefit LMI individuals, LMI areas, or other areas targeted for redevelopment by local, state, tribal, or the federal government, and the nature of the non-bank community involvement. (A document that demonstrates unmet needs in the community and a strategy for meeting those unmet needs.)

The management team of a CD bank should demonstrate the experience, competence, and willingness to operate a CD-focused institution.

The proposed management team must, either individually or collectively, possess extensive knowledge and experience with the highly specialized lending products and lines of business typically proposed by CD banks. An organizing group should match carefully the skills of the management team to the specialized lending products and services that the CD bank will offer.

The requirement for a statement in the articles of association would likely severely limit the national banks that seek certification. However, the remaining criteria would not be unreasonable due diligence in terms of certification due diligence.

In terms of guarding against predatory practices, it would not be unreasonable for the CDFI Fund, as part of its due diligence, to review public records for a bank's current or prior violations of Fair Housing, ECOA, and other fair lending and consumer compliance laws and regulations.

It is more likely, however, that regulated institutions seeking CDFI certification are looking for regulatory relief for new products and services that will be introduced after certification is obtained. It would be reasonable to incorporate representations and warranties in the certification process, both so the institutions being certified know what is expected of them and so there would be a clear process that would allow decertification in cases of noncompliance. Clear documentation would help engage the regulators in the compliance process.

One of the questions posed by the CDFI Fund in the RFI is whether the CDFI Fund should request information on the reason the entity applied for certification and their intended use of certification (they gave the examples of "funding requirement" or "marketing"). That does not seem an unreasonable question to ask in the context of determining if an institution is seeking certification to further their efforts to promote a community development mission.

Service to an Investment Area or Targeted Population: Current CDFI Fund policy requires that an organization must serve at least one Target Market and must direct at least sixty percent of all of its financial product activities to one or more eligible target market(s) to qualify for certification.

The CDFI Fund asks in the RFI:

1. Is the current standard of 60 percent the right standard?

2. Should different thresholds be set for different types of institutions (regulated depositories, nonprofits, and venture capital funds)?
3. Should the CDFI Fund rely on self-reported data to demonstrate compliance with this test?
4. How should the CDFI Fund recognize and apply the provision of financial services in meeting this test?
5. Should the CDFI Fund continue to look at the prior year activity to determine if an applicant meets this test, or should a longer time period be considered?
6. Should the CDFI Fund continue the practice of allowing geographic units in an investment area that do not individually qualify as investment areas?
7. Should all applicants approved to serve a target population be approved to serve such target populations nationally?

This is a test that has been manipulated. To meet this requirement an institution needs to draw an investment area where the majority of census tracts in the investment area are considered low-income communities (80% AMI). The investment area does not have to conform to the bank's stated Assessment Area. The investment area can include low- and high-wealth tracts, and the bank is not required to make the majority of its loans in the low-income tracts. Theoretically, a bank could define an investment area where 60 percent of the tracts are low-income and then make all of their loans in high-income tracts.

At a minimum, the CDFI Fund should refer to an institution's CRA PE when evaluating compliance with this test. The CRA exam is an in-depth review of a bank's accomplishments in meeting the credit needs of the community, including those of LMI populations and communities. For the purpose of the test, the bank defines the market area in which they feel they should be held accountable (Assessment Area). Detailed analysis is then performed on how well the bank served all areas and incomes within that assessment area.

A bank's investment area should conform with the bank's Assessment Area as defined in the bank's CRA examination.

The standard for the minimum threshold of activity in a target market needs to be considered not only in terms of the primary mission test, but also from a safety and soundness perspective. Concentrations in certain assets or in certain geographies, depending on how they are structured and managed, may represent increased risks to institutions. Care must be taken that a bank is not taking excessive risks, jeopardizing safety and soundness, in an effort to conform to an arbitrary threshold.

Financial services to the poor and underserved should definitely be considered, especially in regulated depository institutions offering retail banking products.

Accountability Test: The CDFI Fund currently requires that a CDFI maintain accountability to its Target Market through representation on its governing board and/or advisory boards.

The CDFI Fund asks in the RFI:

1. What percentage of a CDFI's board members should satisfy accountability rules?
2. Is representation on an advisory board sufficient to demonstrate accountability?
3. Should CDFIs be able to demonstrate accountability through means other than board membership?
4. Is a business plan and a stratified, statistically significant random sample of lending by asset class and location sufficient to document accountability?
5. Should accountability requirements differ by the type of Target Market?
6. How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investors who are not members of a Target Population themselves?
7. How should a CDFI demonstrate accountability to a national Target Market?
8. How should a CDFI that utilizes a web-based lending platform demonstrate accountability?

It is important to understand the difference between the role of an advisory board and the role of a governing board, especially in the context of accountability to internal and external stakeholders. It is also important to understand clearly the standards that a CDFI is being held accountable to, how the performance of the CDFI is evaluated, and the implications for non-compliance.

Advisory boards have been a useful resource for regulated financial institutions. The advisory board must be structured and managed properly, with a written charter and structured roles and responsibilities. The advisory boards also must be structured to handle confidential information, avoid conflicts of interest, and minimize exposures to liabilities.

Advisory boards generally act as consultants or good will ambassadors, providing expertise and community insights, and the composition of the advisory board should recognize these roles. Regulated institutions must be sure that the roles and responsibilities of an advisory board are separate from the institution's governing board. It is the board of directors that is accountable to shareholders, regulators, and other stakeholders. The governing board is responsible for overseeing management, providing organizational leadership, and establishing core corporate values.

Clear representations and warranties on how the bank expects to fulfill their community development responsibilities could be a very powerful tool in establishing an accountability structure. Regular reporting on a bank's progress in meeting its stated community development objectives is a reasonable way for the bank to be accountable for its community development strategy, both internally and externally.