



SUNRISE BANKS

December 5, 2022

To: Mr. Spencer W. Clark
Treasury PRA Clearance Officer
Office of Management and Budget
U.S. Department of the Treasury

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

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

RE: Responses to Proposed CDFI Certification Application Requirements, Federal Register Document Number Vol. 87, No. 213 / Friday, November 4, 2022

Dear Director Harris and Ms. McInnis:

Sunrise Banks, NA in St. Paul, MN respectfully submits the enclosed comments on the Notice of Information Collection and Request for Public Comment published by the Community Development Financial Institutions Fund (CDFI Fund or the Fund) in the Federal Register on November 4, 2022. As stated, the CDFI Fund is seeking comment on the content of the revised CDFI Certification Application.

Sunrise Banks NA, Member FDIC, based in St. Paul, Minnesota, strives to be the most innovative bank empowering financial wellness. Sunrise has been certified by the U.S. Treasury as a Community Development Financial Institution (CDFI) since 2001. Sunrise has been awarded \$367 million in CDFI and Treasury Awards (FA/BEA/NMTC/SDL, and RRP). In addition, we were awarded \$250 million in Emergency Capital Investment Program funds. Sunrise Banks is also a member of the Global Alliance for Banking on Values, a public benefit corporation and a certified B Corp for its demonstrated commitment to transparent corporate governance and positive community impact.

Sunrise Banks appreciates the hard work of CDFI Fund staff to support the CDFI industry. Because of this hard work, we've been able to multiply our impact to LMI communities.



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We are concerned, however, about existing language in the CDFI certification proposal. Overall, the proposed new standards for CDFI Certification will restrict the ability of Sunrise Banks to serve our target market. The following is an abbreviated list of provisions in the proposed application that contribute to this serious problem.

Ability to repay

- 1. Changes will limit our flexibility to deliver impactful, responsive products and services, that are the core tool for Sunrise Banks to serve our targeted LMI communities' and overall community development mission.**

With the proposed changes, Sunrise will need to document that we have incorporated an evaluation of "ability to repay" (ATR) into our underwriting standards for each of our consumer, mortgage, and small business loans.

This requirement will stifle useful and responsible products. Particularly small dollar lending, including credit building loans, overdraft, and earned wage advance loans. The requirement is simply too narrow to capture the wide variety of credit products that very reasonably do not require an ATR standard.

CDFIs are explicitly exempted by the Consumer Financial Protection Bureau (CFPB) from requirements that apply ATR standards in underwriting for home mortgage lending. We are exempt because of our historic, demonstrated need for flexibility in working with people without traditional income documentation. As the former Chair of the CFPB's Community Bank Advisory Council, the CFPB supported the ATR exemption because of the demonstrated community need and the CFPB has the authority to grant such an exemption. Based on my experience with the CFPB, the CDFI Fund does not possess the authority to override the CFPB regulation. The CDFI Fund should not be applying an ATR test to CDFI Certification, given the CFPB's explicit exemption of CDFIs from the regulation.

***We request that the ATR addition be removed from the proposed certification requirements.*

- 2. CDFIs will be prohibited from making "mortgage" loans with certain characteristics that are otherwise permitted under the CFPB's ATR/QM CDFI exemption (prohibited: balloon, interest only, 30-year maximum term).**

The definition of "mortgage" in the application is not specific, meaning that commercial products with these attributes may be included.

The application states that "any applicant offering products that lack reasonable protections or that charge excessive fees, inconsistent with regulatory guidance or a community development mission, may be determined ineligible for CDFI Certification.



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There is no standard offered for a definition of “reasonable” or “excessive” or what may be inconsistent with “a community development mission.” Additionally, “regulatory guidance” is vague and subjective. Each regulatory agency can issue their own guidance that applies only to financial institutions to which they have enforcement authority. To broadly apply a “regulatory guidance” standard would require financial institutions to monitor and apply guidance and interpretations from all agencies, not just the one(s) with supervisory authority.

***We ask that you revisit this section and restrict language to not include commercial products and remove all value language with no established standards of conduct.*

Target Market Eligibility & Timing

- 1. The new certification rules introduce eligibility of financial services (depository accounts) for eligibility, by allowing 60% eligibility for financial services depository accounts, if 60% of financial products by count, and 50% by dollar financial products lending thresholds are met.**

***Please consider allowing 50% by count of financial products, similar to the 50% by dollar for financial products, especially if financial institutions offer or are incentivized by the CDFI fund (through SDL program) to issue larger quantities of small dollar, or credit building loans. Sunrise originated over 510,000 small dollar or credit building loans in 2021, impacting nearly 300,000 LMI individuals with an average loan size of \$553.*

- 2. Over the long term, Sunrise Banks supports the change to the Target Market Test whereby the Fund will assess compliance based on a three-year average. However, we have concerns about how this will be implemented in the transition period immediately following the finalization of the new application.** While ebbs and flows in demand make a three-year average more representative of an organization’s commitment to its Target Market than the current standard, the proposed “look back” requires some clarification based on the CDFI Fund’s proposal.

Given the proposed changes, currently certified CDFIs should only be evaluated on activity conducted after an adequate period of time has passed from the publishing of the final rule. If the CDFI Fund wishes to put the new application in practice as soon as possible, compliance for currently certified CDFIs would be better assessed on a two-year time frame through the last day of the second fiscal year completed after the final standards have been published. This would allow one year for existing CDFIs to change their procedures, adjust their product design and market engagement, and one additional year to put them into practice.

***We strongly urge the CDFI Fund to clarify how it will evaluate the historic activity of currently certified CDFIs if they engaged in qualifying activity that will be disqualified under the new certification rules.*



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Board Accountability

The proposed certification language states that we cannot compensate board or advisory members for them to be considered accountable, and those accountable members cannot have an active financial product from the applicant.

For regulated CDFIs, the proposed Board Accountability language presents a safety and soundness issue. Community development finance in the United States is not a cottage industry of unsophisticated providers. CDFIs of all corporate forms must attract and retain the best and the brightest to manage and oversee the institution's community development mission and risk in executing on that mission. Community accountability is just one factor that is necessary in overseeing a regulated CDFI. A recent example of the breadth of skills needed to govern a regulated CDFI is the Paycheck Protection Program (PPP). CDFIs participating in the PPP leveraged their community knowledge and mission with technical expertise of compliance, fraud, technology, cyber security, credit underwriting and marketing and communications to effectively deploy this essential government program in a time of a pandemic. The CDFI Fund, CDFIs and the LMI communities we serve benefited by the expertise and knowledge possessed by CDFIs. Reasonable compensation for a board and advisory board member is not a conflict to accountability, it is a complement.

The proposed changes to Board Accountability are unworkable that no customer of the applicant could be considered "accountable" for board representation. In addition, staff members of the applicant cannot be used for accountability purposes. It is a banking regulation that the President of a bank must be a voting board member for accountability purposes. In addition, it is required that bank board members must attest to a code of conduct policy, conflict of interest policy, disclose related interests to their regulatory agency, and file a regulation "O" report when any business is conducted for transparency purposes.

The additional board accountability requirements will make it difficult to attract and retain qualified board and advisory members. The Individuals providing accountability via role in a third-party organization to "executive staff (e.g., Pres., VP, CFO)", with "powers to manage and supervise the day-to-day affairs of an organization." is also too narrow of a definition.

***We strongly request that you keep the board accountability language from the current certification requirements.*

Loan Purchases

The CDFI Fund counts loan purchases from CDFIs, and Target Market loans purchased from non-CDFIs as Financial Products. Loan Purchases should be presented for review in connection with the Target Market requirements as follows:



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- **Loan Purchases from CDFIs, whether purchased individually or in bundle, are recognized as Financial Products directed to an “OTP – Certified CDFIs” Target Market. Each bundled Loan Purchase from a CDFI will count as a single Financial Product transaction.**
- **Target Market loans purchased from non-CDFIs are recognized as Financial Products directed to the Target Market(s) of the original borrowers. Applicants that purchase Target Market loans from non-CDFIs in bundle may count each of the purchased loans as a single Financial Product transaction.**

This implies that the purchase of a bundle of loans from a certified CDFI will count as a single financial product.

***We request clarity on this statement. For example, a purchase of 200 loans for \$1M, would qualify as 1 qualified transaction for \$1M, if purchased from a certified CDFI?*

Conclusion

In conclusion, Sunrise Banks fully appreciates the thoughtful consideration of the CDFI Fund and its staff in continuously seeking to improve the effectiveness of the CDFI certification process. We sincerely appreciate the opportunity to comment and offer feedback. We look forward to future discussion on these important issues.

If you have any questions, please contact David Reiling, CEO at david.reiling@sunrisebanks.com.

Thank you for considering our recommendations.

David Reiling
Sunrise Banks, CEO