



# **Native American Capital, LLC**

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December 5, 2022

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

Michelle Dickens  
Program Manager  
Office of Certification, Compliance Monitoring and Evaluation  
Community Development Financial Institutions Fund  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Re: Response to Proposed CDFI Certification Application Requirements, Federal Register  
Number #202211-1559-001

Dear Director Harris and Ms. Dickens,

Native American Capital (NAC), a Native American-owned financial consultancy company, respectfully submits the enclosed comments on the Notice of Proposed Community Development Financial Institutions (CDFI) Program - Certification Application in the federal register on October 4, 2022. As stated, this is the last opportunity for public input on the revised CDFI Certification Application and reporting requirements before they are implemented in April 2023.

NAC is a Native American-owned financial consulting company that serves a wide range of Indian Country clients — tribes, Indian-owned businesses, businesses seeking partnerships with tribes, and investors seeking to capitalize on Native American-owned enterprises. NAC specializes in enterprise-level financing that brings the full range of financing strategies and structures to highlight special financing opportunities available to Native American tribes as they exercise their sovereign nation status. NAC is providing these comments because the amendments and policies CDFI intends to implement by adopting new rules will significantly change how financing is available to tribes and tribal entities.

## **Native CDFIs are Necessary**

Native CDFIs provide lending products, financial education, and access to capital for many tribal communities. However, as a result of institutional racism, isolated geographical areas, and low employment, which has led to low credit profiles, Native American communities often lack the financial collateral to qualify for traditional loans. Also, due to tribal federal trust land status, they lack the traditionally necessary land to offer as collateral. As a result, tribal communities have the lowest homeownership among all United States citizens. A 2022 study from the National Community



Reinvestment Program showed that 50.8 percent of Native Americans own their homes, compared to 73.3 percent of white Americans.

a. Long-term loans over 30 years. As a result of limited finances and access to real estate for collateral, tribal communities often rely on federal government home loans. Utilizing the United States Department of Agricultural and the Department of Housing and Urban Development home loans, tribal communities often deploy a 38-year loan repayment period to lower the monthly payment to an affordable one. However, limiting the availability of these long-term repayments risks limiting the few resources tribal communities have to purchase and own a home. Therefore, we respectfully request a waiver for Native CDFIs of the 30-year limited loan length.

b. Financial Lending Education. Native CDFIs do more than lend to tribal communities. They provide financial education, credit repair, and training services to help tribal communities access capital. The proposed barring of youth-based economic development is hurtful to tribal communities without financial literacy training. Native CDFIs provide safe and reliable financial lending literacy training to youth. This is a valuable service for tribal communities and should not be restricted. Therefore, NAC respectfully requests an exemption to the limit on youth-based financial literacy training as it serves to support tribal youth financial literacy.

### **Tribal Government Sovereign Status**

In previous CDFI Fund regulations, Indian tribes have been considered, as defined in the case law, as “domestic dependent nations” rather than agencies or instrumentalities of the U.S. or any state. Simply put, defining Indian tribes as agencies or instrumentalities ignores the fact that the CDFI Fund defines “agencies or instrumentalities” as only those entities of the U.S. or states. This has the potential to cause unnecessary confusion and further restrict access to capital. Indian tribes are sovereign governments and should be recognized as such. A CDFI that is operated or controlled by a tribal government is eligible to apply for certification and CDFI Fund regulations should recognize that Indian tribes are sovereign tribal governments.

### **Native CDFI Board Representation “Native Community”**

We urge the CDFI Fund to adopt a “Native Community” definition that recognizes the Board members' enrollment in a federally recognized tribe to qualify for the Governing and Advisory Board representation and advisory threshold. Currently proposed language does not adequately grasp that being accountable to a “Native Community” means being an enrolled member of a federally recognized Indian tribe.<sup>1</sup> NAC notes that most Native CDFIs are based in tribal communities. But board members serving on Native CDFI boards often do not live in tribal communities. The fact is that many tribal communities often lack the necessary resources, such as job placements, and most qualifying board members live away from tribal areas. This is not something tribal communities are proud of, but it is the simple fact that most members with an educational background to qualify for a board position often live in areas removed from tribal communities while nevertheless remaining accountable to the communities to which they belong. The CDFI Fund's proposed restrictive definition of “Native Community” drastically reduces the pool of eligible Governing Board members to those who can meet the Accountability standard based on geography alone. Therefore, NAC urges the CDFI Fund to adopt a requirement that recognizes an eligible board members' enrollment in a tribal community, rather than their geographical region, to meet the Governing Board threshold.

<sup>1</sup> • At least 33% of the governing board are accountable to a Native Community population or Native Community geography; and  
• At least 50% of such representative board members are members of a Native Community population(s).

## **Native CDFI Board Representation “Native Community geography” area**

In addition, NAC urges the CDFI Fund to adopt a geographical area definition that is broader than federally designated reservation. Indian tribes have lost 99% of the historical land they once occupied to non-Indians and to the federal government. Limiting the “geographical area” to a federally recognized reservation does not recognize this historical fact, not to mention that some federally recognized tribes still have limited lands to reside on themselves, are landlocked (thus restricting access to homes and utilities--preventing livable conditions), or are landless. NAC urges the adoption of “Indian Country” as defined by 18 U.S.C § 1151 as follows:

- a. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
- b. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- c. all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Adopting such a definition of “Indian Country” is not only consistent with the statutory definition and federal case law interpreting the same, it recognizes that lands held by the federal government in trust for Indian tribes that exist outside of formal reservations are informal reservations and, thus, are “Indian Country.” This definition gives ample opportunity for boards to use a broader geography that both qualify for CDFI Fund requirements and recognizes the historical problem Indian tribes have with land status.

## **Direct Tribal Consultation**

NAC strongly recommends that the Department of Treasury provide direct tribal consultation to Indian tribes, their members, and individual Native CDFIs to determine if the Native CDFI proposed amendments are fair or overly burdensome. These amendments are unique and should be scrutinized by all Native CDFIs before implementation.

## **Conclusion**

Thank you for your consideration of these comments. Please direct any questions to NAC’s attorneys Ben Fenner at [bfenner@ndnlaw.com](mailto:bfenner@ndnlaw.com) and Xavier Barraza at [xbarraza@ndnlaw.com](mailto:xbarraza@ndnlaw.com) or (202) 450-4887.

Very truly yours,



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