

December 5, 2022

Jodie Harris, Director  
CDFI Fund  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

RE: CDFI Certification Application (OMB Control Number: 1559-0028)

Dear Director Harris:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on the CDFI Fund's updated CDFI certification application. OFN is a national network of more than 390 community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other under-resourced communities across America. Our membership has originated \$90 billion in financing in urban, rural, and Native communities through 2020.<sup>1</sup>

### **CDFI Certification**

Updates to the CDFI Certification application are a long-overdue modernization of a key industry credential. Since the CDFI Fund's inception in 1995, there have been major changes in the financial services landscape and the CDFI industry. In that period, CDFI certification has become highly desirable for many organizations. The number of certified CDFIs has grown from less than 200 in 1997 to more than 1,400 institutions in 2022 yet there has not been an update to certification criteria. The revisions are an acknowledgment that the credential needs to evolve to meet the current needs of distressed communities while providing the flexibility needed for the CDFI industry to continue to grow.

CDFI certification should foster a diversity of CDFI types, activities, and geographies; allow for innovation that supports the growth and reach of CDFIs; and signify confidence in an organization's strong community development mission. The CDFI Fund (the Fund) has a responsibility to keep certification standards high to prevent unsavory financial service providers in low-wealth communities from becoming certified CDFIs. CDFI certification is a privilege and the CDFI Fund must safeguard it to ensure those receiving the designation are truly community development focused and demonstrate accountability to low-income communities.

At the same time, the Fund must balance placing onerous costly requirements and high barriers to entry on mission lenders that make the process so overly restrictive that worthy applicants are not able to obtain the status. If aspects of certification are so complex that existing CDFIs cannot navigate it and potential applicants are dissuaded, that will not result in process improvement or better outcomes for the low-wealth communities CDFIs serve.

### **Positive Reforms in the Certification Application**

- **Rigorous Review of Applicant's Community Development Mission.** While certification is first and foremost the CDFI Fund's determination of eligibility for its programs, public and

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private investors have also come to recognize certification as a mark of confidence in an organization's commitment to a community development mission. As "certified CDFI" status increases opportunity for CDFIs and opens the door to additional investors, it is important the CDFI Fund serve as a gatekeeper and ensure entities seeking certification have an intentional community development strategy and are providing affordable, responsible financial products. The CDFI Fund is taking important steps in determining an applicant's mission focus by requiring a strategic plan, reviewing an applicant's products and services, requiring disclosure of pricing, and more.

**Responsible Financing Guidelines.** Implementing requirements to evaluate borrower ability to repay for certain CDFI products is an important reform. As lenders with specialized knowledge of the challenges facing the low wealth markets where we operate, CDFIs should be leaders in responsible financing practices. The CDFI Fund for the first time is taking a closer look at both the mission of entities seeking certification and evaluating the financial products and services being offered – and requiring them to meet certain responsible financing guidelines.

In particular, OFN is pleased to see the CDFI Fund adopt some of the provisions of the Small Business Borrowers Bill of Rights related to transparency in pricing for small business loans, including requiring lenders to assess borrower ability to repay, requiring lenders to offer loan products that disclose, in writing, the periodic payment due, the total amount to be repaid over the life of the loan, the total finance charges over the life of the loan, or the annual percentage rate (APR) of the loan. These are important steps forward for much-needed transparency in small business lending.

In most cases, the updated application provides much-needed guardrails against predatory practices. In some cases, noted below, the standards imposed may be too restrictive and could impede the flow of responsible capital to people and places CDFIs serve. It is also important that the CDFI Fund allow certain exemptions on a case-by-case basis if a CDFI provides an explanation; however, this is only workable if concerns are addressed in a timely fashion.

- **Disclosure of Pricing of CDFI Products.** The CDFI Fund takes critical steps toward transparency by requiring entities seeking certification to disclose rates and terms of their financial products. Increasing pricing transparency for CDFI financial products helps customers make more informed choices and allows the CDFI Fund to identify lenders seeking certification that might be charging inappropriately high interest rates or fees. It will also enhance the understanding of CDFI products. One area of concern is the Military Lending Act annual percentage rate (APR) calculation may be unfamiliar to some applicants. The Fund should consider providing training on interest rate calculations as CDFIs might have a learning curve calculating APR using the Military Lending Act methodology.
- **Removing Geographic Boundaries on Target Markets.** The new certification policy which eliminates geographic boundaries and mapping requirements for most Target Markets is also a long overdue reform. This policy change gives CDFIs more flexibility to make investments based on market conditions and need and will reduce the time spent on a lengthy approval process to update Target Markets.



- **Addition of Persons with Disabilities as an Other Targeted Population.** OFN supports the addition of Persons with Disabilities (“PWD”) to the CDFI Fund’s definition of a Targeted Population. As the National Disability CDFI Coalition notes PWD are disproportionately Low-Income and/or lack adequate access to Financial Products or Financial Services. Research from the FDIC Household survey, the National Disability Institute, the Urban Institute, the other sources of data and analysis clearly demonstrate that PWD are more likely to experience poverty, low-wealth, and lack of access to responsible financial products and services.
- **Improving Available Data on the CDFI Industry.** OFN is pleased that the CDFI Fund plans to make public additional data on the CDFI industry. However, CDFIs expressed concern about privacy issue related to making public certain personal identifiable information. OFN recommends the Fund make public as much data as possible without violating any privacy laws, and that the Fund coordinate with relevant regulatory agencies to ensure that personal information like homebuyer addresses are not made public.

### **Suggested Areas of Improvement**

- **Ability to Repay Requirements for Mortgage Lenders.** While CDFIs are exempt from the Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule) established by the CFPB, product protections consistent with the ATR/QM rule should be required for any CDFI engaged in mortgage lending.

However, there may be circumstances where more flexibility is appropriate and responsible. For example, a CDFI that is refinancing a borrower from a high-cost product to a more responsible mortgage might need to offer a transitional loan where the terms include interest-only periods with balloon payments – a clear community development purpose with no predatory intention. Under the new rules, a CDFI Certification application would be rejected for providing such a product. Rather than a bright line that automatically excludes a CDFI from certification if a product is offered with that feature, the Fund should allow CDFIs a narrative option to explain why these products have a legitimate community development purpose and how the entity is ensuring the product is affordable and responsible.

The application is unclear on whether this provision applies to single family mortgages only, or also to mortgages for commercial real estate, multifamily housing, or community facilities.

### **Target Markets**

- **Add Asian-Americans to Other Targeted Population.** Exclusion of Asian Americans does not account for income and wealth differences within the Asian community. Although household median income for Asian Americans is 38% greater than the national median income of \$63,179 these numbers mask the true inequality. Income inequality in the U.S. is rising most rapidly among Asian Americans, as Burmese Americans make a median income of \$36,000. In addition, many Asian Americans still face economic insecurity with large discrepancies between income and wealth among Asian American nationalities. According to 2017 Census data, Filipino Americans faced a 6% poverty rate, compared to more than



16% for Hmong Americans.<sup>2</sup> A wholesale exclusion of an entire race is not appropriate. OFN urges the CDFI Fund to expand the definition of Other Targeted Population to ensure that CDFIs can direct resources to underserved Asian communities.

- **Clarify Income Verification of Indirect Beneficiaries.** The proposed certification application does not allow an applicant to include loans and investments that primarily benefit a Targeted Population indirectly, especially for Low Income Targeted Populations. Both the Riegle Act and CDFI Fund regulations are clear that a Targeted Population may be served directly via loans to members of the Targeted Population), but also indirectly through providing employment or services.<sup>3</sup>

This omission may have serious repercussions for small business lenders. The assessment methodologies listed in certification application require the CDFI to collect individual or household data from beneficiaries. This is challenging if a CDFI lends to a small business that committed to employing low-income people but does not have the ability to require income verification from employees, or to share that data with the CDFI. Such a requirement would be burdensome for the employer and intrusive for the worker. Similarly, a community facility that serves low-income people may rely on self-reporting to verify income of its users. It is not feasible to expect the CDFI financing the community facility to require the facility to demand tax returns or other forms of income verification.

OFN recommends the Fund consider a more flexible approach to income verification and explicitly include options to include indirect impact. The Fund should also provide clarity about how financing community facilities could qualify under the new certification application.

## Financing Entity

- **Allow Staff Time on Development Services to Count Towards Financing Entity Test.** Changes to the Financing Entity test will require entities applying for certification to dedicate a predominance of both assets and staff time to the provision of Financial Products and/or Financial Services. This means assets and staff dedicated to Development Services do not count towards these tests, even though to become certified, a CDFI must provide these Development Services. This change ignores the reality of CDFI lending in which many borrowers require extensive coaching and technical assistance before they are ready to receive capital.

Several CDFIs in our network, in particular Native, small and rural CDFIs raised concern about the ability to meet the financing entity test. There are times, such as during the

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<sup>2</sup> Dedrick Asante-Muhammad and Sally Sim, "Racial Wealth Snapshot: Asian Americans and The Racial Wealth Divide," National Community Reinvestment Coalition. Published May 14, 2020. <https://ncrc.org/racial-wealth-snapshot-asian-americans-and-the-racial-wealth-divide/>

<sup>3</sup> The statute dictates that financial assistance may be made available to CDFIs that support businesses that provide jobs for low-income people or are owned by low-income people; or enhance the availability of products and services to low-income people. The regulation governing certification states: An entity may serve the members of a [Targeted Population](#) directly or indirectly or through borrowers or investees that directly serve such members.



pandemic, when CDFIs were making pass-through grant dollars and spending significant staff time on development services where non-financing activities temporarily eclipsed a CDFI's financial products. This pivot was critical to CDFI's ability to respond quickly to the economic challenges brought on by the pandemic.

OFN recommends the Fund maintain the most recent requirement that a majority of staff time must be dedicated to a combination of financing activities and Development Services. At a minimum, this provision should provide the CDFI to explain the cause of the imbalance and enter a cure period to remediate.

## Development Services

- **Reconsider Narrowed Definition of Development Services.** The updated definition of development services is narrow. While it is important for certified CDFIs to offer meaningful development services to their customers, the Fund should not implement a one size fits all approach. A critical component of the CDFI business model is providing customized technical assistance to meet each customer's needs.

Classroom-based training is not always a feasible or accessible way to offer technical assistance. The Fund must build more flexibility into this requirement and allow for different models. The application also states that "online TA" is not allowed – the Fund should clarify if this applies to the use of online meetings via Zoom or other videoconferencing platforms which are an adequate substitute for in-person meetings.

- **Remove Prohibition on Youth-Based Services.** Under the proposed CDFI Certification changes, "workshops for children or broad audiences" and related types of activities would no longer be considered qualifying Development Services. This change would have an especially negative impact on the work of Native CDFIs. A November 2022 Native CDFI Network survey found more than 78 percent of respondents offer youth-focused financial literacy trainings, entrepreneurship trainings, matched savings programs, and other programs that collectively prepare Native youth to grow their personal assets and wealth and eventually successfully utilize loan products offered by Native CDFIs.

Offering youth development services help Native CDFIs build a future pipeline of qualified borrowers. For example, many Native CDFIs have offered financial literacy or entrepreneurship training to high school-aged youth. Once youth turn 18, they are eligible for a loan. A microenterprise or credit builder loan can help a young person build their financial capacity and lay the foundation for wealth building.

The Fund should allow CDFIs to offer youth-based financial literacy as long as the CDFI can demonstrate how this development service is critical to advancing the community development mission of the CDFI.

## Accountability Requirements

- **Reconsider Executive Level Requirements for Board Accountability.** Executive level requirements for CDFI board service may be challenging for some CDFIs in some markets



non-executive level staff such as lending staff could make valuable contributions to the board of a certified CDFI.

- **Allow Service on Other Qualified Boards to Demonstrate Accountability.** The new application would "eliminate(ing) the existing option of utilizing an Applicant's board member's participation on the governing or advisory board of an unconnected organization as a means of demonstrating accountability to a Target Market."

As the CDFI Coalition notes, members of a board can offer specific expertise in areas like finance or real estate while demonstrating accountability through meaningful work with organizations representing or serving low-income people and places. Some board members may join while employed by such an organization and then move on or retire but continue to provide valuable expertise to other organizations. Board members who serve on other qualifying boards should be able to provide accountability via that board service.

- **Reassess Financial Conflict of Interest Policy for Board Service.** The new application would "prevent board members with certain types of financial interest in an organization from being considered accountable to any Target Market component, as the financial interest may conflict with a board member's ability to effectively represent the interests of the Target Market."

The potential for conflict of interest is valid. While safeguards and policies are essential to prevent conflicts of interest, OFN does not agree with the prohibition against providing financing to a board member. Additionally, as OFN member LIIF notes, client representation on a CDFI board provides invaluable insight into the needs, challenges, and opportunities of the communities being served and embeds this perspective at the core of the CDFI's influence. These perspectives should be encouraged and contribute to Accountability without precluding the client from receiving financial support.

There are numerous examples of how this policy will have unintended consequences. For example, in some rural markets, the local CDFI is the only affordable source of financing in the region. Community members should not have to choose between accessing capital from their CDFI or providing valuable service to the board. This policy also ignores CDFIs whose boards are elected by the membership. OFN's own Board of Directors is elected from our members, and more than 36% of our members are current borrowers. Credit unions, whose members are also elected to their boards, should not be prohibited from offering mortgages or small business loans to board members who choose to serve.

Other industries and many CDFIs have mitigated this potential conflict by having clear disclosure and conflict of interest policies and practices. The most important is that Board/Advisory Committee members with an active financial product should be recused from any decision or meeting that may involve decisions, directly or indirectly, on their financial product or relationship. Other recommended governance practices include having a specific Conflict of Interest policies; Annual Conflict of Interest training; and Annual Conflict of Interest attestations."



## Conclusion

CDFI certification is a valued credential relied upon by public and private sector investors. OFN commends the CDFI Fund for introducing reforms to the CDFI certification application to strengthen accountability to the customers and communities that CDFIs serve. The CDFI Fund is trying to strike a balance between offering flexibility and maintaining the integrity of the CDFI credential. There are areas where there could be improvement or additional flexibility, as responsible products that might look differently based on the market conditions on the ground. We urge the CDFI Fund to continue to provide flexibility for truly mission-driven CDFIs to develop and tailor financial products to best meet the needs of their communities.

Certified CDFIs will need time to comply with the new certification requirements and to prepare to reapply under the new rules. The CDFI Fund should provide greater clarity for its anticipated timing for recertification and allow at least a one-year grace period. OFN also urges the CDFI Fund to provide training and guidance on the new rules to avoid potential confusion, and to ensure that these changes do not decertify high-performing, mission lenders from being achieving CDFI certification.

Thank you for the opportunity to comment. Please feel free to reach out with any questions at [dwiliams@ofn.org](mailto:dwiliams@ofn.org) or 202.868.6922.

Regards,

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