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

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

Dear Ms. McInnis:

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

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

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

General Comments

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

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

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

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

Primary Mission Test

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

Recommendations:

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

Aligning with other federal programs benefiting underserved borrowers

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

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

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

The treatment of affiliates

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

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

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

Financial Products and Services:

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

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

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

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

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

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

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

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

Minimum Standards

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

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

Community Development Objectives

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

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

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

Financing Entity

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

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

Recommendations:

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

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

Target Markets

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

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

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

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

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

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

Verification of Low-Income Target Population (LITP).

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

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

Other recommendations

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

Accountability

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

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

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

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

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

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

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

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

Sincerely,

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