



November 5, 2020

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: FUND Consulting Response to Proposed CDFI Certification Requirements

Dear Ms. McInnis:

FUND Consulting submits these comments in response to the Community Development Financial Institutions (CDFI) Fund's Request for Public Comment on the CDFI Certification Application. FUND Consulting strongly supports the CDFI Fund's efforts to create a streamlined and transparent process for CDFIs to apply for their Certification. Our comments below are organized to respond to the different sections of both the CDFI Certification Application as well as to answer the questions raised in the Notice and Request for Information.

Since 2000, FUND Consulting has worked with more than 350 CDFIs nationwide, including CDFI banks, credit unions and loan funds. FUND Consulting has helped these CDFIs gain and maintain CDFI Certification, follow CDFI Fund compliance goals, and raise capital, including through the successful submission of CDFI Fund grants and allocations totaling more than \$582 million. FUND Consulting has also assisted CDFI clients in increasing their capacity by understanding their markets, evaluating the effectiveness of their programs, developing their boards, and creating strategies to manage growth and maximize impact. During this time, FUND has worked on more than 450 CDFI Certification and Recertification applications.

CERTIFICATION REPORT

FUND Consulting appreciates the thoughtfulness that CDFI Fund staff have brought to the work of updating the CDFI Certification application to ensure that requirements are in line with the CDFI mission while allowing increased flexibility to organizations in meeting the Certification criteria. While in some cases these changes will result in additional complexity for applicants to navigate, this increased flexibility will benefit many CDFIs. The proposed special provisions relating to spinoff entities and those seeking Certification solely to participate in the Bond Guarantee Program are two examples of this flexibility.

There are also aspects of the proposed application that will add complexity or burden to applicants without a clear benefit to CDFIs. In some cases, these changes seem to be driven by a desire for improved data on the CDFI industry. FUND Consulting recognizes that this data collection is a legitimate function for the CDFI Certification application to serve. However, at points there may be tradeoffs between this goal and the goal of



an application that can be readily navigated and completed by applicants. As an example, when completing the Basic Information section, applicants will be asked to complete an array of questions for each of their products, such as providing the earliest date that a transaction in each product was closed, in addition to providing a “free response” description for each. Many CDFIs offer dozens of products, and the requirement to provide these details for each product offered by the applicant and any affiliates may add considerable burden. As an alternative, the CDFI Fund may consider requesting this level of detail at the level of product purposes, so that applicants could instead describe the range of their product offerings within a given purpose rather than describing each product offering separately. FUND Consulting believes that this change would both reduce applicant burden and improve the quality of information provided by applicants.

The ultimate utility and burden of many of the proposed changes will depend on the implementation of the new application requirements, such as the timeframe for existing CDFIs to meet the new requirements and the functionality of the new CTLR report within AMIS. FUND expresses confidence that the CDFI Fund staff will bring the same level of thoughtfulness to these details as has been demonstrated by the process thus far.

Relating to the question of implementation of the new Certification application, FUND believes that implementing quarterly deadlines for submission of new Certification applications would make the process more time intensive for applicants. There are often technical issues relating to the application and particularly the CIMS mapping system that require follow-up with CDFI Fund staff. Navigating these issues could prevent applicants from submitting ahead of the submission deadline, even if they have started the application process well ahead of time. The introduction of the CTLR is likely to increase the need for this type of follow-up, causing more organizations to miss quarterly deadlines.

LEGAL ENTITY REQUIREMENT

FUND recognizes that the Legal Entity section of the application is substantially unchanged from the current Certification process and does not have comments to share relating to this aspect of the application.

PRIMARY MISSION REQUIREMENT

FUND recognizes that the changes to the Primary Mission requirement are being proposed in order to collect additional detail to verify that applicants are carrying out their stated missions of improving the economic conditions of underserved people and residents of distressed communities. FUND believes that the structure of the Primary Mission section can be improved to capture this detail in a manner that is more in line with the way that organizations think about their mission and work. Additionally, FUND believes that additional clarification is needed to describe how responses to the Primary Mission section of the application result in an applicant meeting or failing to meet the requirements for Certification.

Requiring applicants to articulate their community development strategy as it relates to their mission and work is certainly a reasonable addition to the CDFI Certification application. However, FUND believes that the proposed structure of the community development strategy, with applicants selecting objectives from a list that are then individually associated with outcomes that are in turn associated with discrete qualities of product offerings, is not in line with the way that organizations conceive of their work. Further, given that the



product characteristics listed seem to have been selected because of their benefit to underserved populations, it is not clear what utility is added by the requirement that applicants provide support for the positive impacts of each individual product characteristic. FUND believes that this structure will add burden to the process of completing the application without improving the quality of information collected by the CDFI Fund.

As an alternative to this structure, FUND recommends that the CDFI Fund instead ask applicants to describe their community development strategy as referenced in their internal business planning documents and ongoing business practices. After articulating this strategy in their own terms, applicants could then be asked to describe how their products and services carry out this strategy and achieve impacts in the community. While this method would be more in line with the Primary Mission section of the Certification application as it currently exists, the requirement that applicants reference internal planning documents would help ensure that CDFIs set community development objectives and plan their activities in order to accomplish these objectives. This alternative structure would not result in standardized data among applicants as the current proposed structure would facilitate, but it would likely improve the ability of applicants to meaningfully convey their strategy and how they execute it, improving the CDFI Fund's ability to evaluate their fulfillment of the Primary Mission requirement.

If the CDFI Fund prefers to leave the current structure as it has been proposed, applicant burden could be reduced by requiring PM13 responses only when applicants select product characteristics of "Other."

FUND recognizes that the range of information requested in the "responsible financing practices" section is relevant to the question of Primary Mission and that the CDFI Fund's ability to evaluate these practices is an important component of deciding whether an organization is carrying out a community development mission. FUND notes that while product interest rates are mentioned in the financial product descriptions component of the Basic Information section, applicants are not currently instructed to provide their products' rates in any standardized fashion—the CDFI Fund may wish to explicitly request that applicants provide weighted average interest rates for each product category in order to ensure standardized information is provided among applicants.

FUND understands that as part of the public comment process the CDFI Fund is currently evaluating whether any particular activities should be required or prohibited for organizations to be certified as CDFIs. Once the CDFI Fund has arrived at a decision regarding this question, FUND urges that the application state transparently whether any of particular responses, such as the use of debt collectors, or a failure to offer low-cost checking accounts, would result in the applicant not meeting the Primary Mission requirement. This transparency would ensure that organizations are able to modify their activities where necessary to meet best practices in the CDFI industry and comply with CDFI certification requirements.

Finally, FUND recommends that applicants be given the opportunity to explain responses to questions PM25-28 if not attesting affirmatively.

FINANCING ENTITY REQUIREMENT

FUND appreciates the CDFI Fund's changes to the Financing Entity test and believes that the proposed changes will allow a greater number of entities engaged in financing activity in underserved and economically



distressed communities to gain CDFI certification. In particular, FUND is strongly supportive of two of the proposed changes to the Financing Entity requirement. First, FUND strongly believes that the CDFI Fund's updated definition of predominance, that the provision of financial products and services no longer needs to represent the majority of a CDFI's assets and staff time, but rather, needs to be the activity that represents the greatest share of assets and time, will be extremely beneficial for many CDFIs, particularly those engaged in real estate development. Second, FUND believes that the provision for Spinoff entities will aid larger organizations in leveraging existing resources to reduce the time needed to apply for Certification while still ensuring that the newly certified entity meets all of the criteria for CDFI certification.

TARGET MARKET REQUIREMENT

FUND Consulting is strongly supportive of the CDFI Fund's proposal to remove geographic boundaries from CDFI Target Market lending. FUND believes that this change will enable CDFIs to be more responsive to geographic shifts in where distressed and underserved communities are located within their Target Markets over time. FUND also strongly supports the CDFI Fund's proposal to assess Target Market lending based on a three-year average for currently Certified CDFIs. FUND believes this proposal will generate many benefits for CDFIs as well as the communities they serve, including:

- Providing CDFIs with much needed flexibility during natural disasters and economic downturns;
- Enabling CDFIs to ensure the long-term financial stability of their organizations;
- Allowing CDFIs to more rapidly respond to geographic shifts in need and demand within the communities they serve;
- Reflecting more accurately a CDFI's ongoing ability to serve their identified Target Market.

FUND also believes that Custom Investment Areas (IAs) serve a critical role for many CDFIs who are committed to meeting the financial needs of underserved and distressed communities within a distinct geographic area. While IA qualified census tracts provide CDFIs with a rough guideline of where some of the areas of greatest economic distress are in the communities they serve, census tracts may not accurately portray economic distress on the ground for several reasons:

- 1) Tract level IA qualification is based on American Community Survey data from a distinct point in time that is only updated once every five years. As such, this data does not reflect the impact that either local or national economic cycles can have on a community and can quickly become outdated, particularly in period of economic downturns. For example, the CDFI Fund's current IA Qualified tracts are based on American Community Survey 2011-2015 5-Year data estimates. This data reflects a period of overall national economic prosperity when poverty and unemployment were at record lows and income was at a record high. Today, the country is on the brink of experiencing the most severe economic downturn since the Great Recession as a result of the COVID-19 pandemic. Many communities that are currently considered to be located in non-qualified tracts are facing widespread unemployment, rising poverty rates, and plummeting income. CDFIs should not be discouraged from serving these communities simply because they were not considered qualified five years ago in 2015.
- 2) Economic distress is not consistent across a census tract and is not bound by census tract delineations. In FUND's 20 years of experience, we have found that, for CDFIs serving IAs, lending in non-qualified



tracts is frequently located in tracts that are contiguous to qualified tracts. In many cases, the difference between lending in a qualified or non-qualified tract is a matter of crossing a street. This does not mean that this lending is less beneficial or that the business or person that received financing is located in an area that is not distressed. It simply points to the limitations of solely tract-based qualifications.

- 3) The benefits of investing in economically distressed communities are also not bound by census tract borders. For example, investing in a small business that is close to IA qualified census tracts but not in a qualified census tract does not mean that residents of the IA qualified tracts will not benefit from that business's products and services or the employment opportunities that small business provides.

While FUND appreciates that the CDFI Fund intends to maintain the ability for CDFIs to serve a Custom IA, FUND believes that the proposed CDFI Certification guidance disincentivizes the use of Custom IAs. FUND strongly believes that the new requirement that 85% of a CDFI's activity within a Custom IA occur within qualified census tracts will be extremely harmful for CDFIs with Custom IAs, and, in particular, for CDFI banks that primarily serve urban areas. Of the 22 clients that FUND currently works with to assess Target Market lending in the first 6 months of their FY2020 that have a Custom IA, 82% would not be able to meet the new 85% criteria based on current lending activity. To better understand why this is the case FUND analyzed where the Custom IA lending in non-qualified tracts occurred within the Custom IA for a sample of clients. FUND's analysis showed that much of this lending is in non-qualified tracts that are contiguous to qualified tracts in the Custom IA. Therefore, these CDFIs are not intentionally targeting activities in communities that are not economically distressed. Rather, they are taking a holistic view of serving the broader community that includes many economically distressed tracts that may not be captured through the CDFI Fund's current tract level IA qualification data.

FUND strongly urges the CDFI Fund to eliminate the new 85% financial activity requirement for Custom IAs. Ideally, FUND believes that CDFIs should be allowed to count all lending within their Custom IA toward Target Market lending since in order to serve a Custom IA, the area in aggregate must meet the CDFI Fund's qualifications for an Investment Area. However, if the CDFI Fund is concerned that the majority of a CDFI's activity is taking place far away from qualified tracts, FUND proposes that the CDFI Fund allow CDFIs to count activity in non-qualified tracts that are contiguous to qualified tracts in the 85% requirement. This would align with the way that the CDFI Fund, in particular with the BEA program, and other Federal programs give CDFIs credit for activities that occur in census tracts that are contiguous to, but not in, fully qualified tracts.

FUND supports the CDFI Fund's efforts to allow depository CDFIs to use a combination of financial product and service activity to demonstrate that they meet the Target Market lending criteria. However, in FUND's experience working with CDFI depository institutions, many of these institutions have thousands of depository accounts at any point in time. Additionally, CDFIs do not always have an address associated with each depository account. Even if they did, FUND routinely encounters system outages and slow processing times within the CDFI Fund's geocoding and TLR report systems, meaning it would be practically impossible to report all of those accounts in a TLR in a timely manner. For example, it can take multiple attempts to upload a file for geocoding, each timing out before successfully processing. For a file with 100 addresses, FUND has found it can take up to 20 minutes to upload that file into the CDFI Fund's mapping system, CIMS, and successfully geocode once uploaded. If a file contains more than 100 addresses, the processing time can take



significantly longer, or, more often than not, will fail. Once addresses are geocoded, the current AMIS system can only upload a limited number of TLR transactions at a time, which also takes an extensive amount of time to upload and frequently results in upload errors due to discrepancies in TLR input data that differs from published CDFI Fund guidance. As a result, FUND has found that to simply upload a TLR with a few thousand entries, if the system is working correctly, it takes at least several hours. If AMIS or CIMS are experiencing system wide errors (which occur frequently when many users are working on uploading addresses and TLRs close to reporting deadlines) it can take several days to complete a TLR upload. Therefore, FUND recommends that the CDFI Fund introduce the new ability to meet the Target Market lending criteria using financial service activity only if the CDFI Fund can make significant upgrades to its current software systems.

FUND also recommends that, rather than ask for information on each individual deposit account for the purposes of calculating Target Market activity, that the CDFI Fund instead ask CDFIs to report on the number of households that have at least one deposit product at the bank. Based on CDFI bank customer experience, higher income households located outside of the Target Market often have multiple types of deposit accounts with a bank to serve a wide variety of needs, such as a money market account, checking account, high yield savings account, etc. Alternatively, lower income households often have a smaller number of deposit accounts, but are highly reliant upon these products for their financial well-being. As such, counting the number of deposit accounts alone could skew Target Market activity as higher income households likely to be located outside of the Target Market may be counted more frequently than lower income households. Asking banks to report on the number of households to be served, which could easily be done by looking at the number of accounts with the same address information, would more accurately capture the number of families located within a CDFI's Target Market that are benefitting from a CDFI's services.

Finally, FUND is concerned that the new provision requiring Depository Institution Holding Companies (DIHCs) to meet Target Market requirements both individually and collectively could have negative repercussions for several CDFI banks. In order to meet their regulatory requirements to provide products and services to their entire service area while fulfilling their CDFI mission, several CDFI depository institutions have entities that are formed to conduct specific types of Target Market lending, for example in certain geographic areas with high levels of needs and demand or for specific financial products that may be difficult for a bank to provide due to regulatory constraints. Others have created Community Development Entities (CDEs) to partake in the CDFI Fund's New Market Tax Credits program and their role in the proposed certification changes is yet unclear. These structures allow CDFI DIHCs to holistically meet the needs of their Target Markets in a way that is both more flexible and responsive than would be possible if all of their entities were held to the same Target Market lending requirements. FUND suggests that the CDFI Fund continue requiring CDFI DIHCs that use their affiliate bank's activity to fulfill Target Market lending requirements to meet the requirement alongside their affiliated bank entity, but not include other affiliate entities into the collective Target Market requirement.

DEVELOPMENT SERVICES REQUIREMENT

FUND Consulting supports most of the changes regarding Development Services; however, FUND is concerned that one of the proposed changes will weaken a CDFI's ability to provide borrowers with the type of personalized and timely support for which they have become known.



FUND believes that the CDFI Fund’s new definition of development services as “a formal stand-alone training, counseling, or technical assistance service . . . that the entity offers separately and distinctly from its other products/services” as well as the elimination of “Non-structured conversations with consumers on Development Services subject matter” as an eligible development service will hinder CDFIs’ ability to provide borrowers with tailored and applicable development services when they are most needed. In our 20 years of experience working with CDFIs, we have found that some of the most effective development services are those “non-structured” conversations that provide CDFI borrowers with the tailored information they need to access and responsibly manage financial products and services that otherwise would be unavailable to them. Non-structured conversations also allow CDFIs to respond to changing situations quickly, outside of the development of formal training documents. We regularly conduct Customer Surveys for our CDFI clients to help them to better understand the needs and demand for development services within their Target Markets. Within those surveys, customers often agree that development services are important, but do not express demand for formal stand-alone training, counseling, or technical assistance. Instead, customers make it very clear that they value the “unstructured conversations” they receive from CDFI staff that go above and beyond helping them navigate the loan application process to provide them with the critical skills they need to ensure they successfully leverage the financial capital and services a CDFI is making available to them. For example, in a recent survey conducted on behalf of a CDFI bank, 43.20% of all their customers, and 55% of low income customers, reported that they would like the bank to provide them with more opportunities for individual counseling, while only 28.16% of customers reported that they would like the bank to offer additional technical assistance classes. The importance of these unstructured one-on-one conversations was particularly evident during the outset of the COVID-19 crisis, when many small businesses were struggling to stay above water during shelter-in-place orders. Several of our CDFI clients used the Paycheck Protection Program (PPP) loan application process to also provide borrowers with critical business advice and to connect them to other community resources to help them navigate their way through the crisis. But for these unstructured conversations, these business owners would not have received this critical information that was often the difference between keeping their business open or being forced to close permanently.

ACCOUNTABILITY REQUIREMENT

FUND applauds the efforts of the CDFI Fund to increase CDFIs’ flexibility in demonstrating Accountability to their Target Markets. That said, there are several areas of the proposed changes to the Accountability section that could prevent CDFIs working to ensure Accountability to their Target Market from meeting the proposed thresholds set by the CDFI Fund, without clear benefit.

Creating an aggregate threshold of Accountable members across Target Markets, rather than requiring CDFIs to meet thresholds for each Target Market separately, will allow organizations with multiple Target Markets to demonstrate their Accountability without necessitating the creation of separate Advisory Boards. While FUND appreciates the CDFI Fund’s efforts to provide more flexibility in meeting the accountability requirements, FUND recommends the CDFI Fund reconsider the proposed change that only having one board member accountable to each Target Market is enough to show Accountability as it goes against best practices in



Diversity, Equity, and Inclusion (DEI). To create a truly diverse and inclusive environment, best practices call for representation to go beyond one member of the population serving as a representative for all, discounting the varying perspectives and experiences within the community and putting undue burden on the individual. And while DEI conversations often focus on race and ethnicity, this approach is important to employ across all underrepresented communities. As such, FUND recommends the CDFI Fund instead implement the standard currently utilized for NMTC accountability: at least 2 members of a board, or 30% of the overall board, is required to be accountable to the Target Market, whichever is the greater number of board members.

While there have been and continue to be many conversations in the industry at large regarding DEI and many CDFIs are working to implement DEI best practices, we believe the CDFI Fund has the opportunity to outline parameters that set the standard and facilitate DEI best practices in the industry. Along these lines, we also recommend the CDFI Fund reconsider the use of the word “Other” in “Other Targeted Population” as the term is seen by many to be diminishing to the population referenced. FUND recommends the CDFI instead use “Targeted Population.” Finally, our team appreciated the CDFI Fund’s clarification in the comment letter FAQs that being an employee of a CDFI with an OTP alone does not suffice for accountability, and that the individual would still need to be a member of the population to meet the accountability requirements. This will further ensure that CDFIs are again employing DEI best practices. We recommend the CDFI Fund take this same approach for all OTPs, including Persons with Disabilities.

Requiring that Advisory Boards include at least one member of the Governing Board is a reasonable mechanism for ensuring that Advisory Boards’ input is shared with the Governing Board. However, the proposed requirement that organizations meeting the Accountability requirement through Advisory Boards also maintain a 20% level of Accountability through their Governing Board is likely to be problematic for many CDFIs, with CDFI banks especially likely to face challenges.

CDFI banks and their Governing Boards are required to meet fiduciary and legal requirements set by their regulators—for this reason it is not necessarily possible for banks to modify their Governing Boards to meet Accountability requirements. Further, many CDFIs and CDFI banks in particular have staff or shareholders serving on their Governing Boards who are ineligible to provide Accountability—it is possible that these CDFIs may have Governing Boards made up entirely of individuals who cannot provide Accountability. These CDFIs would be unable to meet the updated Accountability requirements as currently proposed, despite formal mechanisms to ensure Accountability through Advisory Boards.

The proposed application states that in addition to reviewing Advisory Board members, the CDFI Fund will assess several factors relating to Advisory Board operations. FUND understands that this is necessary for the CDFI Fund to evaluate whether an Advisory Board is legitimately providing Target Market Accountability and acknowledges that this information is also collected as part of the existing Certification application. FUND requests that in finalizing the new Certification application the CDFI Fund clearly state any concrete requirements that exist in assessing the operations of Advisory Boards—for example, whether any particular process is required for organizations in selecting their Advisory Boards or for Advisory Board members in obtaining input from the Target Market.



Finally, FUND has noted that in evaluating board member Accountability to Investment Areas, the proposed application places an increased emphasis on the qualification of census tracts relating to the Board member’s affiliations. Examples include requiring that Board members that are accountable to Investment Areas through affiliations with a third-party organization serving the Investment Area must demonstrate that a majority of the organization’s activities are deployed among residents of qualified census tracts, and the requirement that elected officials can only provide accountability to an Investment Area if a majority of the census tracts in their jurisdiction are qualified. In the case of the former, it is unlikely that any organization that is not itself a CDFI would be able to report if its activities are primarily being deployed among residents of qualified tracts, and it is not likely that organizations would be willing to share addresses of service recipients with an outside organization seeking this data for purposes of CDFI Certification. In the case of the latter, it is not clear that the proportion of census tracts that are qualified is a meaningful measurement of an official’s Accountability to the Investment Area—as a counterexample the majority of a county’s population may live in the one census tract in the county that is qualified, while a greater number of non-qualified tracts exist in the county. For these reasons FUND recommends that the CDFI Fund continue its practices of following up to request additional information from applicants when it is not clear whether a Board member is accountable rather than instituting these inflexible standards.

NON-GOVERNMENT ENTITY REQUIREMENT

FUND recognizes that the Non-Government Entity section of the application is substantially unchanged from the current Certification process and does not have comments to share related to this aspect of the application.

We would like to extend our thanks for the opportunity to provide comments on the Certification application. The CDFI Fund is a vital resource to help CDFIs build capacity and leverage additional resources to continue providing credit, capital, and financial services in our nation’s most distressed and underserved communities. Please feel free to contact us at 773-281-8845 should you wish to further discuss any of the above comments.

Sincerely,

A handwritten signature in black ink that reads "Manjima Bose".

Manjima Bose
Partner

A handwritten signature in black ink that reads "Maggie Brennan".

Maggie Brennan
Senior Consultant

A handwritten signature in black ink that reads "Daniel Sloan".

Daniel Sloan
Senior Consultant

& the FUND
Consulting
Team