December 5, 2022

Jodie Harris, Director

CDFI Fund

Department of the Treasury

1801 L Street Northwest

Washington, DC 20006

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

Dear Director Harris:

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

The CDFI Coalition ("Coalition") is the national voice for CDFIs of every type: Insured depositories (banks and credit unions), loan funds, and venture capital funds. 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.

The proposed rules – while well-intentioned – could upend many segments of the CDFI industry. Bright line requirements and the heavy burden of reporting and data collection will make it difficult for hundreds of small CDFIs of all types to maintain certification. Larger CDFIs with the capacity to meet the administrative requirements of certification will be forced to abandon longstanding products and services and divert internal resources from program delivery to compliance. CDFI banks and credit unions – which are already subject to strict federal regulation – will be asked to commit significant additional resources toward duplicative reporting and data collection activities.

That said, we very much appreciate the CDFI Fund's commitment to protecting the CDFI brand and ensuring that predatory and irresponsible lenders are prohibited from receiving a federal CDFI certification. We hope the following comments will provide the CDFI Fund with a path for achieving these goals without creating an undue burden on the hard-working, mission-driven lenders serving our most vulnerable and marginalized communities.

# General Comments

## Responsiveness

CDFI Coalition members very much appreciate the hard work of CDFI Fund staff to support the CDFI industry. Your work has been invaluable in helping businesses and low-income communities stay afloat during the COVID-19 pandemic.

Once the pause in certification ends next year, with new resources and processes in place, we urge the Fund to establish a minimum timeframe for responding to certification-related service requests, after which, absent a response, a CDFI can proceed in good faith.

# Basic Information

## Legal Information

Much of the information requested in this section is also requested through SAM.gov.

We echo other commenters' request that the CDFI Fund use registration with SAM.gov to confirm applicants meet the legal entity requirement for certification. In addition to efficiently addressing the Legal Entity requirement, SAM registration will ensure that every CDFI is ready to participate in CDFI Program funding rounds as soon as they are certified.

# Primary Mission Test and Responsible Financing

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.

## Responsible Financing Practices

We generally agree with the intent of the CDFI Fund's approach in setting minimum standards for financial products, CDFIs offer a variety of responsive products to their customers that do not meet these standards – often for reasons outside of their control.

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.

One common example is when CDFIs need to align a financial product with the timing and requirements of other federal programs. For example, a balloon payment to account for source terms (a mortgage with a term of seven years to match a seven-year financing source that is amortized over thirty years with the expectation of refinancing after year seven); or terms longer than thirty years (a second mortgage paired with a forty-year USDA 502 loan guarantee.)

With regard to the proposed MAPR requirement capping loans, it is worth noting that all depository CDFIs are already required to calculate Annual Percentage Rates (APRs) for consumer and business loans in compliance with the Truth in Lending Act (TILA). TILA's APR calculation can accomplish the same objective as MAPR of ensuring transparency in pricing without requiring CDFIs to comply with two competing regulations (TILA and MLA).

We were encouraged that the CDFI Fund is allowing exemptions from some of these requirements on a case-by-case basis if a CDFI provides an explanation; however, this is only workable if the Fund sets clear standards for evaluating exceptions, allows for exceptions in a wider variety of circumstances, and addresses concerns are addressed in a timely fashion.

For the 2022 funding round, the CDFI Fund's Small Dollar Loan Program identifies several prohibited practices which cannot be part of any loan program that receives an SDL Program Award. Several Coalition members suggested barring CDFIs from engaging in some of these identified prohibited practices for loan products with an interest rate above 36% APR:

* (1) Delayed loan disbursements for borrowers who do not agree to automatic repayments; (2) charge fees for borrowers who select manual payments, or (3) require borrowers to make payments using wire transfers or other means that may result in additional fees for borrowers;
* Allow refinancing before at least 80% of the principal has been repaid;
* Offer add-on insurance or credit card products, whether they are automatic or not, that require borrowers to opt-in or opt-out to decline coverage or require the borrower to accept or opt-out of a credit card. For example, loans that automatically include insurance products such as credit, life, disability insurance, or involuntary unemployment insurance coverage, or loans that automatically open a credit card for the borrower; and
* Charging more than one fee per late payment.

## Other Federal Programs/Regulations

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 unable to obtain credit elsewhere. CDFI Certification Applicants or Affiliates 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 could not 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.

Conversely, the CDFI Fund should recognize fair lending violations or other sanctions handed down by other regulatory authorities. We support the CDFI Fund's proposal to examine whether organizations have a history of regulatory sanctions, predatory practices, or recent unsatisfactory ratings on Community Reinvestment Act exams (subject to reasonable cure periods in cases where regulatory practices are subject to change), and to consider these organizations ineligible.

Depository CDFIs (banks and credit unions) are subject to oversight by both their primary federal regulators, Consumer Financial Protection Bureau, National Credit Union Administration, and state banking authorities. 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 judgments against the lender. 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 presented to prospective and actual customers.

## Ability to Repay (ATR) and Monitoring Default Rates

The CDFI Coalition did not reach a consensus on this issue. We support the principle that loans should be based on the borrower's ability to repay, and we support the CDFI Fund's effort to thwart abusive actors from obtaining CDFI certification. Responsible underwriting is especially important given the trend toward online lenders using autopay to retrieve repayments from a borrower's checking account before a borrower can pay other essential expenses.

Some Coalition members expressed concerns about the challenges small business owners, small farms, and individuals without regular W2 income will face in documenting income. They saw the ATR requirement as too narrow and are concerned it will fail to capture the wide variety of credit products and individual circumstances that responsibly meet the needs of borrowers. For example, the CDFI Fund does not state how it plans to evaluate the narrative portion of this question. There are no clear standards for what will or will not satisfy the CDFI Fund that an applicant is justified in declining to apply an ATR standard to a particular product.

PM13.1 asks,

Did any of the loan products in question have an annual default rate over five percent? Yes or No. If Yes, the Applicant is not eligible for CDFI Certification.

While the CDFI Fund should monitor default rates, a strict five-percent ceiling for loan product defaults could leave CDFIs at the mercy of macroeconomic forces beyond their control. The 2008 financial crisis was caused by the collapse of the subprime mortgage market following the widespread adoption of irresponsible lending practices by non-CDFI lenders. It would have been a shame if the CDFI Fund had decertified CDFIs in 2010 and 2011 because of default rates elevated by deceptive and irresponsible lending practices of non-CDFIs. Recessions are when distressed communities need CDFIs the most.

In addition, a strict cap on default rates could encourage lenders to mask unaffordable loan products through refinancing. A review of default rates alone will not substitute for an upfront ability-to-repay determination.

* Question PM 17 proposes to automatically disqualify applicants based on their response to a narrow set of questions related to small business lending disclosure. There is not currently any legislative or regulatory standard for small business lending disclosures. Disclosure practices vary, and within that spectrum, arguments can be made in favor of multiple approaches to small business lending disclosure that align with a community development mission. While we support the notion of a coordinated policy approach driven by the appropriate standard-setting authorities, if the CDFI Fund wishes to encourage better disclosures to small businesses, we suggest that the Fund incentivize such practices rather than disqualifying those that do not meet the proposed narrow standard.
* Questions PM 24, 25, and 26 ask depository applicants to select from a list of product features associated with depository products that appear to either advance a community development objective (such as PM 24) or appear to represent consumer protections by way of "safety and affordability" (PM 25 and 26). We urge the CDFI Fund to clarify this section. The CDFI Fund states that offering certain service features will be automatically disqualifying. Given that these financial services are provided by regulated depositories, it is not clear what "reasonable" or "excessive" can mean.

# Data Collection

We echo comments from Inclusiv that the Fund must ensure AMIS has the capacity to handle the volume of data it requires CDFIs to report. Inclusiv estimates that the volume of reporting data submitted by CDFI credit unions will be quintupled by the proposed certification application. Today, credit unions already experience significant bugs and delays in uploading a lesser amount of data. The new reporting may overwhelm AMIS, potentially raising liability issues for the Fund and credit unions.

CDBA has expressed concern about the overall increase in data collection and the burden of capturing additional data. In the case of currently certified CDFIs, the proposal calls for *three years of historical data*. There is a real risk that the volume of data required will overwhelm existing CDFI data and geocoding systems. Some CDFI Banks administer hundreds of thousands of loans each year. Technology investments are expected to further enhance many CDFIs' ability to scale. The scale is critical to their business model and fundamental to their CDFI mission. However, current data systems to capture census tract information do not support this level of activity and are problematic for all CDFIs with a large number of transactions. The CDFI fund *must* undertake long-delayed upgrades to its data systems before requiring any CDFI to submit the newly required level of information, either once or regularly.

The CDFI Fund should also ensure the updated TLR does not allow the upload of personally identifiable information (PII), like homebuyer addresses, and should condense the report by limiting data fields to only those needed to determine compliance with Fund standards and by allowing reporters to aggregate both consumer and 1-4 family mortgage loans by census tract.

# Financing Entity Test

Under the proposal, unregulated CDFIs of all types and sizes will face a previously unprecedented level of administrative burden in pursuit of ensuring compliance with the "predominance" test. Unregulated CDFIs will be required to submit detailed reporting on how assets and staff time are "used" for different financing and non-financing activities. This requirement will create more administrative burden and complexity, and, as in all cases, more administrative burden and complexity will heavily encumber the smallest CDFIs.

At some point, a valuable and successful non-financing service may, in combination with other services, temporarily eclipse a CDFI's financial products as measured by staff hours. We strongly believe that this should not be disallowed, at least without recourse to a cure period that is reasonably adjusted to the cause of the unbalance. We urge the CDFI Fund not to apply "predominance" standards in such a way that will discourage investments in products and services from being developed in-house by CDFIs that know their market and their field.

# Development Services

The new application provides the following definition of development services: "a formal stand-alone training, counseling, or technical assistance service that promotes access to and/or success with an entity's Financial Products, and that the entity offers separately and distinctly from its other products/services."

We believe this definition is too narrow. It is unclear why technical assistance must exist as a stand-alone program. Two examples of development services offered in connection with financial services:

* **Individual Development Accounts (IDAs).** IDAs are special bank accounts that help low-income Temporary Assistance for Needy Families (TANF) qualifying individuals save for their education, the purchase of a first home, or the start of a business. IDAs are provided in partnership with a nonprofit that often supplements the funds in the account when a client meets certain goals. Often, these accounts require bank staff to devote extra resources to help clients understand and manage the account.
* **Volunteer Income Tax Assistance (VITA) centers.** VITA providers are certified by and work with the IRS to ensure that low-income individuals and the elderly have access to tax preparation and gain the full benefit from tax code provisions such as the earned income tax credit. Many individuals who use these services are among the nation's underbanked, and many CDFI banks and credit unions provide technical assistance resources for those individuals to open affordable checking or savings accounts. This helps low-income taxpayers receive their refunds electronically, making it faster and more reliable and avoiding expensive check cashers. For example, CDFIs are able to provide financial education at VITA centers, including access to videos and brochures, but are not permitted to use the information for direct marketing.
* **Financial coaching:** The narrow definition would exclude from consideration many proven ways in which CDFIs of all types advance financial inclusion and ignore known best practices in financial coaching.

The application also excludes online technical assistance from the definition of development services. However, robust online training and financial coaching should qualify as long as it allows for interaction between customers and staff. For example, posting a video on Youtube should not qualify, but hosting an interactive webinar should qualify.

# Accountability

## Restrictions on Board Members

We understand the importance of direct accountability and the need to prevent the certification of entities that are not genuinely connected to the communities they serve. Still, we fear these overly rigid requirements could lead to the loss of valuable, hard-working board members. Coalition members provided several examples:

* 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."

Board members who serve on other qualifying boards should be able to provide accountability via that board service. Members of a board can offer specific expertise in finance or real estate, for instance, while demonstrating accountability through their active and 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 their expertise to other LITP/IA organizations.

* Accountability via employment should not be limited to executive-level staff (as the new application proposes). Lenders, program staff, and business advisors are often closer to the population served than the CFO or CEO. As a field, it is imperative that we encourage professional development and create jobs accessible to the markets we serve. Board service is a valuable way for mid-level professionals to grow in their expertise and breadth of knowledge. In addition, executive-level staff may not have the time to serve on a board. Why not tap into the experience of mid-level staff?
* The certification application asks if the CDFI has "verified" board member income for board members with low incomes. It is overly intrusive to require board members to provide tax returns or other documentation. We strongly recommend that the Fund allow self-certification of income.
* Another issue is the potential "staff test" for certification (see our section on Financing Entity)

"It dedicates a predominance of both its assets and its staff time to the provision of Financial Products and/or Financial Services. (Predominance does not require a majority, but occurs when an amount is the greatest as compared to all other amounts.)"

As the Northwest Native Development Fund pointed out in their comment letter, this test may lead to the decertification of Native CDFIs in rural communities where clients' options for technical assistance and development services are minimal. For example, a small organization serving a rural market may need additional staff to provide borrowers with business planning services otherwise unavailable in their market. Forcing small rural organizations to limit their technical assistance is surely not the intent of this requirement.

* Another challenge unique to rural communities is the lack of qualified "local" prospective Board members. It would be unfortunate if the very issues CDFIs set out to correct (declining economic opportunity, population loss, and business failures) limit their ability to maintain certification. For example, an enrolled Tribal member who lives off the Reservation should not be categorized as unrepresentative.
* 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." While safeguards and policies are essential to prevent conflicts of interest, we disagree with the prohibition against providing financing to a board member. For example, in some rural markets, the local CDFI is the only affordable source of financing in the region. Entrepreneurs and small business owners are valuable additions to CDFI boards. They should not lose access to financing by volunteering for a board. Instead, CDFIs should have policies in place for such occurrences that exclude them from any decision regarding a loan. One possible remedy is for the CDFI Fund to require disclosure of any financial interest of board members in the CDFI they govern. As CDBA pointed out in their comment letter, these requirements could prevent Board members from receiving overdraft protection from depository CDFIs. This policy would also effectively prohibit virtually all members of credit union governing boards from being recognized as accountable.
* In terms of governing board accountability for credit unions, we echo comments from Inclusiv on the recognition of governing board members of credit unions as being accountable to each credit union's Target Market. Not-for-profit credit unions are member-owned financial cooperatives governed by boards that are legally accountable to the people they serve. Regulations require that credit union boards consist solely of credit union members who are democratically elected by the membership on the basis of a one-member-one vote and serve as unpaid volunteers. These requirements are the same for credit unions of all types, regardless of whether they are federally chartered, state-chartered, or cooperativas in Puerto Rico. As democratically elected representatives who serve at the pleasure of credit union members, credit union board members can only be recognized as directly accountable to the people they serve. Cooperative ownership and governance mean credit union members have a direct mechanism to influence board membership and deliberations through mandatory annual elections and general meetings.

## Submission of a Board-Approved Strategic Plan

We support the requirement for CDFIs to submit a strategic plan. We request clarification, however, on whether organizations will need to submit a new strategic plan each year or whether they are being asked to submit the most recent strategic plan. Smaller CDFIs have expressed a concern that they will need to produce a new strategic plan annually or after any change in their target market.

## Advisory Boards

We support the CDFI Fund's effort to differentiate between regulated and non-regulated CDFIs and the Fund's proposal to allow holding companies and insured depositories to demonstrate accountability through an Advisory Board.

However, we echo CDBA's concern that the CDFI Fund's Governing and Advisory Board Target Market Accountability Test proposal is too narrow and rigid. In the coming years, as technological advances continue to reshape the financial services sector, all CDFIs will be challenged to serve their customers in new ways. The scope of a "community" — within the financial services sector — will likely expand beyond the geographic, demographic, and other boundaries that have traditionally defined community development. If the Accountability standards are too rigid, it may prevent CDFIs from adapting to market changes. CDFIs need to play their part in the online lending market because they can serve as a responsible alternative to predatory online lenders.

# Target Markets and Assessment Methods

We appreciate the CDFI Fund's release of pre-approved proxies and assessment methods for Target Markets.

We will address these topics in our comments in response to the request for comments on the Proposed Pre-Approved Target Market Assessment Methodologies. First, however, here are a few preliminary comments:

* We strongly support the proposal's elimination of geographic boundaries and mapping requirements for target markets.
* The proposed certification application provides no ability for a CDFI to include loans and investments that primarily benefit a Targeted Population indirectly (especially for Low Income Targeted Populations), e.g., through providing employment or services. Because the assessment methodologies listed in the proposed certification application all require a CDFI to collect individual (or household) data from beneficiaries, it would be unworkable to include, for instance, a loan to a small business that has committed to employing low-income people but that cannot require income verification from employees or to share that data with the CDFI.
* We suggest the CDFI Fund provide a list of social service providers that pre-qualify as financing activities benefiting low-income targeted populations. The following social service providers often administer programs targeting low-income people that do not collect verifiable data on participants' incomes:
  + Federally qualified health centers
  + Food banks, food pantries, and meals on wheels.
  + Any organization serving homeless people.
  + Vocational training/job placement organizations
* We support the addition of "persons with disability" as a pre-qualified Other Targeted Population.

## Time Period

Apart from the technical challenge of collecting three years of data from recertifying CDFIs, we have concerns about how the three-year average look back 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.

We strongly urge the CDFI Fund to clarify how it will evaluate the past activity of currently certified CDFIs if they engaged in qualifying activity that will be disqualified under the new regime. There are many substantial changes to the application, both in the Primary Mission Test, the Target Market Test, Accountability, or otherwise. We are concerned that numerous CDFIs will be unable to meet the certification requirements if new standards are applied retroactively to past performance.

## Customized Investment Areas

The path to certification via service to Customized Investment Areas (CIAs) is important to CDFIS of all types that serve predominantly rural communities. As proposed, this approach will force many changes in rural communities that will hurt CDFIs’ Target Markets. Specifically, the CIA loses its utility for CDFIs by counting only the Financial Products and/or Financial Services within the boundaries of the mix of census tracts that comprise the CIA. For instance, if a lender receives an application from a qualified borrower in their CIA that does not live in an eligible tract, the CDFI may be artificially forced to sacrifice their CDFI status. These business realities may create conflicts when CIA qualifying activity is narrowly focused on the census tract, while economic distress is not consistent across a census tract and is not bound by census tract delineations. Lending in non-qualified tracts is frequently located in tracts that are contiguous with qualified tracts. Lending nearby, but not within, a qualified tract may be just as beneficial to that tract.

## Compiling Target Market Data

"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:

* Loan Purchases from CDFIs, whether purchased individually or in a 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."

This provision implies that purchasing a bundle of loans from a certified CDFI would count as a single financial product. We ask that the CDFI Fund clarify some elements of this treatment. Would 100 percent of those loans qualify as eligible lending within the 60% financial products eligibility if purchased from a CDFI? For example, would a purchase of 200 loans for $1 million qualify as one qualified transaction for $1 million if purchased from a certified CDFI?

# Conclusion

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.