Community Development Bankers Association
1444 Eye Street, Suite 201 • Washington, D.C. 20005 • (202) 689-8935 • (202) 689-8938 (fax)

November 5, 2020

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

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: Responses to Proposed CDFI Certification Application Requirements, Federal Register Document Number 2020-09747

Dear Director Harris and Ms. McInnis:

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments on the Notice of Information Collection and Request for Public Comment published by the Community Development Financial Institutions Fund (CDFI Fund or the Fund) in the Federal Register on May 7, 2020. As stated, the CDFI Fund is seeking comment on the content of the revised CDFI Certification Application.

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 147 banks and 104 bank holding companies with the Treasury's Community Development Financial Institutions (CDFIs) designation. CDBA membership comprises 64% of the total assets of the certified CDFI bank sector, and 56% of all CDFI banks by number.

CDBA members appreciate the hard work of CDFI Fund staff to support the CDFI industry. We appreciate the CDFI Fund's focus on ensuring transparency and consistency through annual reporting. We are concerned, however, that the proposed new certification application puts the CDFI Fund potentially on a path to create a set of standards and reporting that are too complex and rigid. These well-intentioned steps may have the unintended consequence of screening out a large portion of current CDFIs and discouraging small and new organizations from seeking certification.

We strongly support the recommendations of the CDFI industry trades joint letter dated November 4, 2020. In particular, we ask that following receipt of public comments, the CDFI Fund engage in direct conversations with the CDFI industry to discuss and fully understand the complexity of issues and challenges associated with implementing such dramatic changes in the annual reporting.

We also wish to emphasize our agreement with the recommendation of the CDFI Coalition 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.

COMMENTS ON PROPOSED CERTIFICATION APPLICATION

Our comments are organized below to respond to questions raised in the Notice and Request for Information.

1. **Basic Information**

CDBA acknowledges that there are no substantial revisions or policy changes to the Basic Information section of the CDFI Certification Application compared to current practices for depository CDFIs. With regard to non-depository CDFIs, CDBA will defer to the recommendations of trade associations whose membership principally consists of such entities on the appropriate Affiliate information standards.

2. **Legal Information**

Within the proposed Legal Information section, CDBA believes there is an opportunity to streamline documentation. The Legal Information, while substantively appropriate, requires applicants to devote significant time to redundantly uploading documents that are already required elsewhere. The CDFI Fund can achieve the same result by relying on an entities' successful registration with SAM.gov to determine legal entity status. We support the use of registration with SAM.gov to 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.

3. **Primary Mission/Responsible Financing**

We agree with the CDFI Fund on its policy goals for this section. We believe that the Primary Mission Test is the most important tool for safeguarding the integrity of the CDFI industry.

We strongly disagree, however, with the proposed approach for implementation of a revised Primary Mission Test. We have great concern that the approach outlined in the proposed application will not be effective in screening out entities engaged in predatory practices. We believe it will, however, impose a heavy and unnecessary burden on the rest of the industry while creating an exponentially greater workload for CDFI Fund staff. The approach will result in a slower and more bogged down certification process — rather than a streamlined one that the CDFI Fund has expressed as its desired outcome. That said, we share the significant concerns that have surfaced about the predatory nature of consumer and small business lending products offered by some unscrupulous entities that often target low income, unbanked, underbanked, or other vulnerable populations. Such entities should never be certified as CDFIs. Safeguarding the integrity of the CDFI industry is a top priority for us all; thus, we advance an alternative strategy.

PROPOSED ALTERNATIVE APPROACH

We fully appreciate the CDFI Fund's desire to create a strong nexus between an entity's mission statement and community development intent. The vast majority of CDFIs do good work and want to provide opportunities to empower their customers and communities. Unfortunately, there are a few bad actors. As a practical matter, we do not believe it is realistic for the CDFI Fund, in implementing the Primary Mission Test, to look into the "hearts and minds" of every Applicant's management team and/or board of directors to subjectively assess the "purity" of their motivations. The CDFI Fund's efforts should focus on creating a mechanism for removing the bad actors rather than burdening the vast majority that are doing the right thing.

We know where bad actors are most often found. Voluminous media, government, and nonprofit studies place the great majority of predatory practices squarely in the unregulated consumer and small business lending sphere. Thus, we strongly recommend the CDFI Fund set clear standards for all CDFIs and grant itself broad authority to deny or decertify the bad actors that violate such standards.

The CDFI Fund should reposition CDFI certification as a privilege — not the right of any organization that meets the letter of the regulations but violates its spirit. CDFI certification should be a badge of honor for those that demonstrate good behavior.

Our proposed approach is multi-prong. First, the CDFI Fund should set clear standards of performance for treatment of consumers and small businesses. Second, every CDFI should be required annually to sign a Consumer and Small Business Protection Attestation. Third, the CDFI Fund should grant itself the broad authority to deny or revoke certifications for those violating the letter or spirit of the attestation. Fourth, the CDFI Fund should clearly put all parties on notice that it has the right, at its discretion, to look outside of the materials provided by an Applicant seeking certification or recertification. If an entity's products, services, or practices appear predatory or are otherwise questionable, the Fund can, and should, deny or revoke certification.

CONSUMER AND SMALL BUSINESS PROTECTION STANDARD:

We recommend that the CDFI Fund outline a set of guidelines and practices for products, services, and implementation that every CDFI engaged in consumer-oriented lending must commit to follow, including for consumer loans, mortgages, small business loans, and other loans made directly to individuals. Examples:

1. All CDFIs should be required to provide clear and transparent information on fees and pricing;
2. An entity offering small dollar loan products that meets the Consumer Financial Protection Bureau (CFPB) definition of a "covered" loan should not be eligible for CDFI certification.[1]

The development of such a list of criteria and practices should begin with an examination of consumer protection statutes and regulations under the jurisdiction of the CFPB. To be noted, we are NOT recommending that non-depository CDFIs become regulated by the CFPB; rather, we believe the principles articulated in these rules can be helpful in identifying guiding principles that can be used as part of the CDFI Fund's "consumer and small business protection standards" that should become part of the certification process.

ENFORCEMENT AUTHORITY

DEPOSITORY CDFIs: In the case of depository CDFIs, we believe the CDFI Fund can rely on the efforts of regulatory agencies to monitor such entities for compliance with the relevant consumer protection statutes and regulations. Depository CDFI banks and credit unions represent half of the CDFI industry and are subject to oversight by their primary regulators and CFPB. These policies are enforced vigorously by the regulatory agencies and constitute a powerful safeguard against CDFIs offering predatory or inappropriate products and practices. The CDFI Fund should consult directly with a depository's appropriate regulatory agency to assess compliance with relevant consumer protection statutes and regulations as part of the annual certification review process. If the CDFI Fund identifies regulatory concerns, such as fair lending violations or other sanctions handed down by regulatory authorities, the Fund may suspend or revoke a certification based on the context and circumstances. Below we outline the

[1] CFPB proposed rule for Payday, Vehicle Title, and Certain High-Cost Installment Loans as published in the Federal Register on June 2, 2016

several regulatory provisions that the CDFI Fund can look toward to address concerns raised in the Request for Public Comment.

NON-DEPOSITORY CDFIs: In the case of non-depositories, we recommend the CDFI Fund create a monitoring system that will allow it to take action if it believes a certified entity is engaged in harmful practices. Non-depository CDFIs engage in a wide variety of different types of lending, including consumer, small business, mortgage lending, affordable housing development, nonprofit facilities, commercial real estate, and more. As noted above, consumer and small business lending is where the preponderance of predatory practices occur within the marketplace. Thus, these types of lending are where the CDFI Fund should focus its most intense scrutiny. Non-depository CDFIs predominantly engaged in activities that serve nonprofit or institutional borrowers (i.e. affordable housing developers) may be exempt.

A revamped certification process should grant the CDFI Fund broad authority to block certification or decertify bad actors if it obtains credible information that an entity has previously violated, or its current products and practices violate, the principles of the attestation. 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 a history of Fair Lending violations, consumer complaints filed with the CFPB, a local Better Business Bureau, or state, local, and other Federal authorities; lawsuits or judgements against the lender; reputable news media reports; and credible reports posted on social media.

We fully recognize the resource constraints of the CDFI Fund. We believe the vast majority of non-depository institutions do good work and do not need extra scrutiny. We believe the CDFI Fund should have full discretion to determine which organizations may require additional due diligence and analysis. As part of such an enhanced 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. Finally, we recommend that the Fund allow the public to report questionable practices of certified entities to the CDFI Fund. The CDFI Fund may use such reports to open an investigation. Such information and facts should be reviewed as a whole in context to determine whether an entity is offering a product or service that is harmful to consumers. If so, the CDFI Fund should have the right to revoke a certification.

PRIMARY MISSION APPLICATION QUESTIONS

We believe that several of the questions proposed in the Primary Mission portion of the application are unnecessary and should be eliminated. As discussed above, depository CDFIs are subject to numerous regulations by their primary regulators (the Office of the Comptroller of the Currency, the Federal Depository Insurance Corporation, the Federal Reserve, the

National Credit Union Administration, and state banking authorities) that safeguard against offering predatory or inappropriate products and practices as well as by the CFPB. The agencies are vigorous in their enforcement of these policies, and their enforcement makes these questions redundant and unnecessary.

We are also concerned that in an attempt to "automate" the certification process, the proposed application creates a system that: (1) inadequately captures the work of the broad spectrum of mission-focused CDFIs; and (2) will be ineffective in screening out non-mission-oriented actors.

The progressive questionnaire asks applicants to describe their work using a waterfall of drop down boxes. Unfortunately, the options in the drop down menus are highly subjective, utilize undefined terminology, and require the applicant to make sweeping statements that may or may not reflect their actual activities. By the time the applicant works though the PM 09-16 questions, it is highly unlikely the answers will reflect their actual products. The hallmark of the CDFI industry is CDFIs' willingness to be flexible and tailor their products and services to the needs of their customers – rather than offer rigidly defined products that can easily be fit into a drop down menu.

The CDFI Fund needs to be transparent about what products, features, and practices would violate the Primary Mission Test. Simply, asking questions in a certification application does not set a clear standard for what may or may not be a disqualifying action. We understand 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 seeking CDFI certification. Whatever the outcome, CDBA urges that the application state transparently whether any particular responses (i.e. use of debt collectors, failure to offer low-cost checking accounts, etc.) will result in the Applicant not meeting the Primary Mission requirement. This transparency will ensure that organizations can plan and adapt, where appropriate, to meet best practices and comply with CDFI certification requirements.

The following are questions – which we believe do not achieve the intended purpose – and should be eliminated and revised as recommended below:

- PM 09 asks Applicants to select "community development objectives" using a very narrow, yet overlapping, list of drop down options. This answer prepopulates PM 10.
- PM 10 asks Applicants to define how they address the "social and/or economic conditions of underserved people and/or residents of economically distressed communities." The answers to PM 10 prepopulate PM 11.
- PM 11 asks applicants to select from another very narrow drop down list of options that omit many of the potential objectives of CDFIs. The answers to PM 11 prepopulate PM 12.

- PM 12 asks applicants to select from yet another narrow and ill-fitting drop down list of highly subjective options. We note that these options appear to be substantially the same as product features under the NMTC application. Using NMTC-subsidized products as a benchmark for all other CDFI products is inappropriate. Most non-NMTC product do not have the deep subsidy offered by NMTC; thus, it is unrealistic to expect CDFIs to provide products with the same features. Most of the options assume incorrectly that there are standards and standardized product and pricing definitions 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," etc.). All of the options force lenders to make blanket statements about products that may or may not be uniformly stated across products and borrowers. In sum, this list of options is wholly inappropriate for CDFI certification purposes and should not be used. The answers on PM 12 prepopulate PM 13.
- PM 13 asks the applicant to write a series of essays on every term, condition, or practice among the products it offers. Unlike many small non-depository CDFIs, depository CDFIs offer a broad array of products. Some products are standardized, but most (such as small business loans or personal loans) are tailored to customers' needs. The amount of work required for applicants to identify and describe every iteration of these loans (as well as review work for CDFI staff) is overwhelming and will be highly unlikely to yield useful information on alignment of the products with the CDFI's mission.
- In PMs 14-16, CDFIs are required to answer a series of questions on their financial services, drawn from the answers in PM 09. Like PM 12, PM 15 inappropriately asks applicants to select from a list of highly subjective drop down options that lack standardized definitions and ask applicants to make uniform statements about all of their services.

To mitigate the difficulties noted above, we strongly urge Questions PM 09 through PM 11 be replaced with a single narrative character-limited question:

- *What are the Applicant's goals and/or objectives for improving the social and/or economic conditions of its community (or communities) served, with a specific focus on residents and/or the underserved people?*

The application could provide a list of sample prompts to help applicants understand the requested format. The sample prompts might parallel Community Reinvestment Act "buckets" (e.g. affordable housing, community services targeting low- and moderate-income individuals, economic development, revitalize or stabilize an low- and moderate-income geographies, etc.) or other community development themes (e.g. narrowing the racial wealth gap).

We recommend Questions PM 12 and PM 13 be replaced with a single question. For example:

For each loan or product line that comprises 5% or more of loans originated in the last fiscal year, please provide the following information:	• Type of product (single-family housing, multifamily housing, commercial real estate, etc.) (NOTE: AMIS should be tailored by CDFI business model (e.g. bank, credit union, loan fund, venture fund) with options that fit definitional categories established by the regulatory agencies or appropriate for the type of transaction (e.g. loans, investments, etc.).) • What is the range of Annual Percentage Rates (APR) charged? • What is the average term (in months)? • How are fees calculated? (Multiple choice) • What type of collateral is required? • Do you have ability to tailor your product to borrower needs? Yes/No; describe how. • How does the product align with the goals or objectives discussed in PM 09?

We recommend replacing Questions PM 14 through PM 16 with a single question that might read:

For the top five financial services offered by number of accounts open, the Applicant should answer the following questions:	• What is the name of the service (savings accounts, checking accounts, checkless checking/debit only checking, money market, certificate of deposit, etc.)? • What are the minimum balance requirements? • What fees are charged? How are they calculated?

CDBA recommends that proposed Questions PM 17 through PM 22 be replaced with the Consumer and Small Business Protection Standards and Attestation discussed above.

The CFPB and bank and credit union regulatory agencies have a wealth of experience developing standards to protect customers from potentially harmful practices. We strongly encourage the CDFI staff to confer with these agencies in developing Consumer and Small Business Protection Standards and utilize the existing Federal standards already in place.

For illustration, we include the following potentially "disqualifying practices" and their corresponding regulation or compliance standards. In the case of depository CDFIs, existing Federal policies already address the issues raised in proposed Questions PM 17 through PM 22. Thus, depository CDFIs should be exempt from these questions as there is already a robust system in place to ensure compliance. In the case of non-depository CDFIs, these regulations can serve as a guide for the Consumer and Small Business Protection Standards and Attestation discussed above.

Potentially Disqualifying Activity	**Bank Regulatory Coverage**	**Bank Regulatory Summary**
Making consumer *and/or* commercial loans that cannot be repaid, triggering a potential debt spiral for the borrower.	OCC/FDIC/FRB - Safety and Soundness and Compliance Examinations[2]	Safety and Soundness exams consider numerous aspects of the credit portfolio to determine whether the financial analysis of borrowers is adequate, the financing needs and repayment capacity are sufficient, the prospects for security, and portfolio management practices taken in response to borrower needs or delinquencies.
The lender is inflexible in its accommodation of distressed borrowers.	Truth In Lending Act/Real Estate Settlement Procedures Act (TILA/RESPA)[3]	These rules dictate what information lenders need to provide to borrowers and when they must provide it. They also regulate what fees lenders can charge and how these fees can change.
Applicant's debt collection practices are aggressive, or avail of aggressive third parties.	Unfair, Deceptive, and Abusive Acts and Practices Act (UDAAP)[4]	A financial institution's practices in collecting debt are reviewed during a Compliance Examination for compliance with the requirements of UDAAP, which prohibits harassment of borrowers.
The applicant contributes to the exclusion of borrowers from main stream finance by not reporting potentially favorable activity to credit agencies.	Reporting loan performance to credit bureaus is standard practice among CDFI banks.	Proper reporting of credit activity is required under the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA). A CDFI Bank's compliance with these requirements is assessed during Compliance Examinations by its Federal regulatory agency.
Lender offers an overdraft or other forms of small dollar	OCC/FDIC/FRB Small Dollar Loan Guidance:	The interagency lending principles specify the positive characteristics of a successful small dollar lending program, specifically

[2] OCC - https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/index-comptrollers-handbook.html; FRB - https://www.stlouisfed.org/bank-supervision/supervision-and-regulation/safety-soundness-supervision; FDIC - https://www.fdic.gov/regulations/safety/manual/

[3] https://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/tila-respa-integrated-disclosures/

[4] https://files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf

loan products that harm consumers.	"Interagency Lending Principles for Offering Responsible Small-Dollar Loans"[5]	loan structures, pricing, underwriting, marketing and disclosures, and servicing and safeguards

CDBA has concerns about adopting the Military Annual Percentage Rate (MAPR) as a strictly applied disqualifying standard as proposed.

All depository CDFIs are already subject to calculation of Annual Percentage Rates (APRs) for consumer and business loans in compliance with the Truth in Lending Act (TILA). APRs incorporate interest rates, origination fees, and other processing fees. TILA accomplishes the same objective as MAPR of ensuring transparency in pricing. Very few CDFIs engage in lending covered under the Military Lending Act (MLA). Thus, it is an inappropriate standard to apply to all CDFI lending. Requiring regulated CDFIs to comply with two competing regulations (TILA and MLA) will be very expensive. Regulated CDFIs will need to amend all consumer financing disclosures, the methodology underpinning them, and make expensive programming changes to their core systems. Instead of MAPR, we recommend all CDFIs use the widely accepted TILA standards for calculating APRs.

Context is important in assessing whether a product is appropriate or harmful to customers. If a CDFI reports product pricing in excess of the 36% APR, the CDFI Fund should investigate to gain a better understanding of the product, its context, and impact on customers. A strict application of any standard can have unintended consequences. For example, very small loans with modest fees can trigger a 36% APR. We are certain that the CDFI Fund does not wish to prevent CDFIs from offering microenterprise loans or small consumer loans, yet this is a potential outcome if context is not considered. As another example, many depository CDFIs offer credit card products. Depending on the design of the product or how a customer uses the card, it can trigger a 36% APR. For example, if a customer uses a credit card for a cash advance — rather than their debit card — it can easily trigger a rate approaching 36%. Most consumers and small businesses find credit cards a useful and safe way to make purchases. Thus, the CDFI Fund should not bar depository CDFIs from offering credit cards; rather, the CDFI Fund should continuously gather information about products available and assess context in determining whether a product is aligned with market standards and/or will have disproportionately negative impact.

[5] https://www.fdic.gov/news/press-releases/2020/pr20061a.pdf

CDBA strongly urges the CDFI Fund to clarify that PM 23 and PM 24 are not applicable to loans or investment vehicles using the Low Income Housing Tax Credit (LIHTC), New Markets Tax Credit (NMTC) and any other tax credit programs.

We recommend questions PM 25 through PM 29 be deleted. The need for these questions is obviated by the recommended replacement for PM 14 through PM 16.

CDBA urges the CDFI Fund to be cognizant of how its certification standards may interact with other Federal regulations. For example, the CFPB exempts CDFIs engaged in mortgage lending from the Ability to Repay (ATR) rule. The CFPB provided this exemption to give CDFIs flexibility to design mortgage products suited to the needs of low wealth households. Thus, any application of APR rules needs to recognize this exemption.

TREATMENT OF AFFILIATES: We agree with the CDFI Coalition that 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, and percent of overall lending). Many CDFIs have Affiliates that provide specialized financing and services that may not necessarily specifically target low-income people and places, but are not otherwise contrary to the Primary Mission Test (e.g. predatory). Some of these Affiliates may also represent only a very small part of the parent company's operations. Affiliates that reflect a small percentage (perhaps 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), but that do not exhibit any predatory behavior, should be exempt from the Primary Mission requirements.

4. Financing Entity Test

CDBA believes that the current standard whereby depositories are presumed to meet the CDFI Certification Financing Entity requirements should not change. We are pleased that the current proposal retains this provision.

CDBA agrees with the requirement that an applicant must be established as a Financing Entity for a minimum of 12 months prior to the submission of a new CDFI Certification Application. With regard to non-depository CDFIs, CDBA will defer to the recommendations of trade associations whose membership principally consists of such entities on the appropriate Financing Entity standards.

5. Target Market Test

NEW OPTIONS FOR DEPOSITORY CDFIs

CDBA welcomes the proposed change giving depository CDFIs a new Target Market option of directing at least 60% of Financial Services (depository accounts) and 50% of Financial Products to a Target Market.

CDBA urges refinement of the threshold for Financial Services. The proposed threshold for Financial Services is "number of accounts" only. A better metric is the "number of unique account holders," and we urge certain deposits to be excluded from the calculation. CDFI banks provide Financial Products in low-income communities where deposit balances are typically modest. To support lending in low-income communities, CDFI banks actively cultivate deposits from socially motivated individuals and institutions who, though often located outside of our Target Markets, nonetheless embrace our missions. These socially-motivated deposit accounts are heavily weighted with customers with higher incomes and higher account balances. Such "imported" deposits do not reflect our Target Markets but are nonetheless critically important to our ability to serve our Target Markets. Any new Target Market threshold for deposit accounts needs to recognize, carve out, and support the important role of socially motivated depositors.

TIME PERIOD

CDBA welcomes the change to the Target Market Test whereby compliance is assessed based on a three-year average (through the last day of the most recently completed fiscal year) of Financial Products and Financial Services (if elected) provided for currently certified CDFIs. 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.

CDBA is very concerned about allowing a lower standard for new certifications. As proposed, new certifications will be based on activity over only a 12-month period. All CDFIs should be required to comply with the same three-year average standard. CDBA recognizes that start-up organizations will have difficulty meeting a three-year standard. As a compromise, we propose that start-up organizations be granted "provisional CDFI status" that is clearly listed on the CDFI certification list. Such entities should be limited to apply only to the CDFI Program's Small and Emerging CDFI or Technical Assistance programs. Once an organization has demonstrated satisfactory performance over a three-year period, the "provisional" designation can be transitioned into a standard, non-provisional status.

That said, we share the concern of industry colleagues that the certification process should not conflate two related, but distinct, requirements. The first is the CDFI Fund's policy of requiring CDFI Certification Applicants to demonstrate that their community development mission has been in place for at least 12 months. We agree with this policy. The second is the suggestion in question PM 08 that appears to explicitly require a 12-month waiting period between adoption of *formal board-approved documentation* and submission of the CDFI Certification Application. We do not support a formal waiting period to follow the adoption of formal documentation, particularly as applied to banks and other regulated institutions. While formal documentation is an appropriate requirement, another subsequent waiting period is not, so long as the Applicant can meet the further requirements for Certification.

INVESTMENT AREAS

CDBA strongly supports the proposed changes to the designation of Investment Areas. We support eliminating geographic boundaries and mapping requirements for Target Markets. This change will enable CDFIs to be more responsive to shifts in demand from eligible Target Markets.

CUSTOMIZED INVESTMENT AREAS

CDBA appreciates the CDFI Fund's allowing CDFIs to create Customized Investment Areas (CIAs) that consist of both qualified and non-qualified census tracts. We urge, however, the CDFI Fund to refine its approach to the CIAs. 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. Part of the problem lies in the fact that census tract data may not accurately portray economic distress. Census tract qualification is based on data from a distinct point in time that is only updated every five years. Further, most CDFI banks and credit unions rely on branches to conduct their business. The challenge is more acute for banks — per the Community Reinvestment Act, they are also obliged to demonstrate a proportionate level of low- and moderate-income-directed activity in the communities served by those branches. These business realities may create conflicts when CIA qualifying activity is narrowly focused on census tract, while economic distress is not consistent across a census tract and is not bound by census tract delineations. CDBA agrees with CDFI industry colleagues' findings that 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.

CDBA is concerned about new language included on page 55 of the proposed questionnaire that specifically includes "non-Metro counties" as one of the mix of geographic units to establish a CIA but appears (by omission) to exclude Metropolitan Counties. This proposed change therefore appears to prohibit Metro Counties. This provision risks excluding depository CDFIs in Metro Counties from an otherwise potentially valuable update to the certification standards. In addition, as is well documented, the designation of Metropolitan and non-Metropolitan counties is highly problematic given that counties in small states are very large and encompass geographies very far from urban places.

MINIMUM THRESHOLD

CDBA strongly opposes increasing the Target Market test above a 60% minimum level. The CIA section, unfortunately, creates higher targeting requirements of 85% within CIAs. If the intention of these requirements are not to force CDFIs even more tightly into arbitrary and shifting borders, we urge the CDFI Fund to eliminate the requirement and subject the assumptions underlying the requirement to further review and refinement to clarify its intent.

Generally, mission is core to a CDFI's purpose and most CDFIs exceed the 60% threshold — in fact, most do so by a significant margin. Yet, CDFIs also need to be responsive to market demand, earn sufficient returns to cover operations, and build equity that is ultimately deployed into the community. Not every loan a CDFI originates or customer they serve will (or should be expected to) meet the Target Market qualifications, and additional 85% thresholds remove that flexibility.

CDFI industry colleagues have received conflicting information during conversations with CDFI Fund staff around two instances that mention an 85% minimum within CIAs. The first is the requirement that a CIA be validated based on "More than 85% of the population [being] in qualified [contiguous] geographic units." The second is the new requirement that a CDFI operating within a CIA "direct at least 85% of [its] financing activity within individually qualified census tracts." These changes, based on possible interpretations, make it especially difficult for CDFI banks serving urban geographies to design and operate within a CIA.

To substantiate this assertion, CDBA requests that the CDFI Fund refer specifically to analysis conducted by FUND Consulting, which identifies a percentage of their clients with CIAs who will not be able to meet the new 85% criteria. FUND Consulting's work with a range of clients finds that CDFIs currently certified using CIAs take an appropriately holistic view of serving the broader community that includes many economically distressed tracts that may not be captured through current tract level IA qualification data. Ideally, all lending and investing within a CIA should count toward Target Market lending.

LOW INCOME TARGET POPULATIONS (LITP):

LITP METHODOLOGIES & PROXIES

CDBA agrees with the CDFI Coalition's recommendation to clarify the LITP definition. Specifically, the CDFI Fund should recognize the validity of end users to qualify for a Low Income Target Population (LITP). CDBA strongly urges the CDFI Fund to work with CDFI practitioners to develop methodologies and proxies for service to LITPs. While some CDFIs provide direct "retail" loans to LITPs and can collect annual income data as part of a loan application process, many CDFIs do not engage in direct lending. A large portion of highly impactful CDFIs are focused on creating benefits that improve the economic stability and mobility of LITPs but do not make loans directly to LITPs. For example, many CDFIs make loans to finance affordable housing, educational facilities, childcare centers, health care clinics, social service organizations, and other institutions that predominantly serve LITPs. In these circumstances, CDFIs currently use income proxies, such as number of students that qualify for free and reduced lunch, number of patients utilizing Medicaid to pay for medical services, and household income restrictions associated within subsidized affordable housing programs. Some CDFIs provide small business financing that create jobs for LITPs. Many have adopted alternative methodologies for capturing or estimating impact. We strongly recommend that a list of approved methodologies and proxies should be published prior to implementation of a new application to give CDFIs time (if needed) to amend their data collection processes.

SUPPORTING INNOVATIVE & NEW METHODOLOGIES FOR LITPS

As technology is rapidly changing how financial products and services are delivered using online and mobile channels, CDBA urges the CDFI Fund to work with practitioners to develop additional alternative sets of proxies or methodologies for measuring financial inclusion and service to low income, unbanked, underbanked, and other vulnerable populations in lieu of solely the current 80% of area median income methodology. Some CDFIs are interested in establishing a LITP using low- and moderate-income block groups but remain challenged by the requirement to collect customer information to ensure they meet the "80% or less of median family income" standard.

In the 25 years since the CDFI Fund began certifying CDFIs, technology has sparked fundamental changes in the financial services landscape. Technology advances are expanding access to financial products among underserved customers, yet some of these offerings have been predatory and harmful. The CDFI Fund should encourage CDFIs to be innovative and use technology to offer products and services that are good for customers and communities. The CDFI Fund should explore creating a new category of "emerging products" that can count toward meeting the Target Market Test requirements if they promote financial inclusion under alternative sets of proxies or methodologies.

The CFPB's Project Catalyst provides a framework for evaluating products and services that may be useful to the CDFI Fund. Interested CDFIs could apply to the CDFI Fund for an "emerging products" flexibility waiver for how the Target Market Test is applied. The CDFI Fund would review each product to ensure it is appropriately structured and not harmful to customers. Approved "emerging product" pilots should be granted flexibility to develop alternative proxies for collection of income data. Pilot participants should be required to report to the CDFI Fund on how the product meets the financial inclusion goals. Such Emerging Products would provide a path for CDFIs to have a blanket, *temporary* qualification for innovative, non-predatory products based on the nature of the product and their utility to less rigid Target Populations (such as Low Income Block Groups), rather than the geographic location.

OTHER TARGET POPULATIONS:

The national conversation about racial equity has sparked renewed interest in finding new ways of ensuring communities of color have fair access to capital. Most CDFIs have a strong interest in maximizing service to such customers. As discussed below, there are real statutory and regulatory barriers preventing depository institutions from collecting racial and other demographic data. Today, the CFPB is in the process of rulemaking to implement the Dodd-Frank Act's Section 1071 and updating the Equal Credit Opportunity Act (ECOA). We strongly urge the CDFI Fund to engage in these discussions with the CFPB and bank regulatory agencies to ensure that depository CDFIs are able to collect race and other demographic data without fear of negative reprisals from examiners.

A relatively small number of CDFI banks opt to certify based on Other Targeted Populations (OTPs), but, among those that do, technological innovation increasingly drives how they serve populations that are not strictly confined to discrete geographic areas. Over the past 20 years, technology has radically changed how a large number of consumers access financial products and services. While studies show some customers still prefer to go to a branch or ATM for services, online banking, mobile banking, debit cards, and other media are rapidly gaining popularity. As such, long-term trends increasingly suggest that CDFI banks will likely be serving a mix of geographic areas and Target Populations.

As noted, some CDFI banks have successfully targeted OTPs. With the exception of home mortgages under the Home Mortgage Disclosure Act (HMDA), ECOA imposes regulatory restrictions on collection of race and other demographic characteristics during the loan application process; this makes OTPs difficult to manage. Some banks have attempted to ask borrowers to "self-identify" by race or other characteristics post-loan closing. Yet, these CDFIs have been discouraged when the CDFI Fund has required the bank to "verify" the borrowers' self-identified demographic, which is an essentially impossible task. Such a request is insensitive to customers. It is particularly problematic for communities of color that are too often disrespected due to their race — yet their self-identification is not taken as fact by the CDFI Fund. We strongly recommend the CDFI Fund cease this practice. CDBA urges the CDFI Fund to accept borrowers' post-closing self-identification in the Other Target Population process.

CDFI banks will be more likely to adopt OTPs if the CDFI Fund demonstrated more flexibility and acknowledged the regulatory hurdles depository CDFIs face in demonstrating service to OTPs. Currently, obtaining customer demographic data, such as race and ethnicity, is not feasible and carries tremendous compliance and reputation risk for depository CDFIs. For example, in an edition of the Consumer Compliance Outlook[6] published by the Federal Reserve Bank of Philadelphia, the Fed shares some percentages of violations they observed during 1,328 examinations in a recent five-year period.

According to the Fed, in 2013, 10.2% of examinations cited Home Mortgage Disclosure Act/Regulation C violations and 10.3% of examinations cited Equal Credit Opportunity

[6] Consumer Compliance Outlook: Q4 2013 - Government Monitoring Information Requirements Under the HMDA and the ECOA, www.consumercomplianceoutlook.org/2013/fourth-quarter/calendar-of-events/

Act/Regulation B violations. While all of these violations related to “either deficiencies concerning the method of collecting demographic information/government monitoring information or failing to collect” the demographic information/government monitoring information, institutions were also cited for collecting demographic information/government monitoring information when it is not required. Fully, 8.3% of examinations also included Regulation B violations for collecting demographic information/government monitoring information on loans that are not subject to such collection.

CDBA suggests that one option with a successful precedent is conducting periodic, third party administered customer surveys. These have been successfully used by several CDFI banks in support of FA applications. The CDFI Fund can encourage this by providing guidance on best-practices or even a framework to conduct these surveys safely and to an appropriate standard of statistical reliability.

TARGET MARKET VERIFICATION

CDBA believes that Question TM 03 (related to types of community development products needed within the Investment Area) is inappropriate, and we recommend deleting it from the certification application. As presented, the question is impossible for CDFIs to answer authoritatively and creates an unnecessary barrier to certification. While it is good business practice for any business to understand the dynamics of a market, it is not incumbent on CDFIs to demonstrate any level of supply-side analysis to the CDFI Fund. While this question may be appropriate in the context of a request for funding, if a CDFI is entering a new market, or establishing the need for introducing a new product, it is wholly inappropriate for establishing eligibility for certification.

6. Accountability

CDBA recommends that the CDFI Fund take a flexible approach in applying the Accountability Test. CDFIs serve different types of Target Markets. In the coming years, as technological advances reshape the financial services sector, all CDFIs will be challenged to serve their customers in new ways. We anticipate 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.

CDBA is particularly concerned that the CDFI Fund’s Governing and Advisory Board Target Market Accountability Test proposal is too narrow and rigid for depository CDFIs. In determining the right balance of “Accountability” representatives, we believe the CDFI Fund should consider the context within which each CDFI operates. CDBA is opposed to setting strict numeric Accountability standards for the composition of members of a CDFI bank’s Governing Board (a.k.a. board of directors).

The proposed requirements — which establish *inflexible Governing Board minimums (20% governing board accountability)* — create real problems for CDFI banks. To begin, a bank charter requires only a minimum of five directors.[7] The proposed 20% Governing Board Accountability standard is simply set too high for CDFI banks.

FIDUCIARY OBLIGATIONS: The expertise and fiduciary requirements of bank directors are markedly different than those of nonprofit directors. Bank directors have specific legal and fiduciary obligations prescribed by the Federal banking regulators and can be personally liable for the actions of the bank. These obligations are a significant disincentive for a small business owner, neighborhood resident, nonprofit representative, or other community representatives to serve on a bank board. This circumstance has made is increasingly more difficult for banks to recruit qualified directors that meet CDFI Accountability requirements.

OWNERSHIP & RELATED INDIVIDUALS: A complication to the Governing Board minimum is that the CDFI Fund currently does not allow individuals related to any bank employee — or a significant bank shareholder — to be counted toward meeting the Accountability Test. This prohibition is particularly problematic for the many rural, minority-owned and other small CDFI banks that are family owned. Thus, the board may be comprised of a significant number of related individuals and have no outside ownership. In these cases, the contribution of capital and expertise from these shareholders are the lifeblood of the institution as well as the community. Yet these individual members of the Governing Board cannot be used under CDFI rules to establish Accountability. To remedy this challenge, family owned banks have named Advisory Boards to achieve the independent Target Market Accountability required. In the case of rural CDFI banks, meeting the Accountability requirements may be a further challenge because the pool of qualified individuals is small; thus, limiting the number of qualified Governing Board members and making the strict minimum impractical to achieve without potentially compromising the bank's fiduciary obligations.

SENIOR EXECUTIVES: Another technical challenge of the Accountability Test for Governing Boards is that the CDFI Fund currently does not allow a CDFI bank's CEO to be considered in the numerator when using a numeric percentage to the Governing Board Accountability Test. Yet, the CEO remains in the denominator. Regulators require a bank's CEO to be on the board. Thus, it is unfair to keep the CEO of a CDFI bank in the denominator, and this practice should be ceased.

ADVISORY BOARDS: CDBA strongly urges the CDFI Fund to continue to allow Advisory Boards to meet the Accountability Test. Advisory Boards are valuable because they are flexible in their composition — in ways that boards of directors cannot be, given safety and soundness regulations. Advisory Boards offer key insights to the needs of markets and submarkets that

[7] FDIC: https://www.fdic.gov/regulations/applications/handbook.pdf, Page 8

may be beyond the purview of a bank director who fills a primarily fiduciary or regulatory compliance role. To ensure the views of the Advisory Boards are taken into consideration by the Governance Board, the CDFI Fund can require that at least one Governing Board member participate in the Advisory Board and/or minutes from Advisory Board meetings be shared with the Board of Directors. Alternatively, an Advisory Board can become a subcommittee of the Board. The Committee Charter can be written to ensure that significant matters are reported the full Governing Board. Governing Board representation on the Advisory Board will further ensure Accountability. At least one CDBA member has considered this option to increase NMTC Advisory Board Accountability. Currently two members of that bank's Governing Board sit on its Advisory Board, along with three low income community representatives.

KEY GOVERNANCE ISSUES

GOVERNING BOARD APPOINTEES: CDBA is alarmed at the CDFI Fund's assertion in Question 17 of Published FAQs[8] that:

> *"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."*
>
> The FAQ further states: *"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".*

Taken together, these statements infer that the CDFI Fund intends to prohibit a CDFI employee appointed to the Governing Board of another CDFI toward meeting the Accountability Test. CDBA opposes such a prohibition. It is common practice for a CDFI's employees to sit on the Governing Boards of other CDFIs given their strong expertise and intimate experience providing financial products and services to Target Markets. CDFI employees are often the most strategic Governing Board members because they understand both the needs of the Target Market and how to balance it with the needs of the organization. Such a prohibition risks two potentially negative outcomes: first, individuals with attributes that would otherwise meet the Accountability Test intent are disqualified; second, turning down such qualified individuals hurts low-income communities that need committed and experienced problem solvers. Over the past several decades, as the CDFI industry has matured, this practice has proven to strengthen the CDFI industry, promote enhanced sharing of best practices, and enhanced Governing Board knowledge of how to serve Target Markets. To prohibit CDFI appointees from

[8] "Do employees of a certified CDFI that serves a Targeted Population meet the accountability test to serve on the board of another entity serving that Targeted Population?"

meeting the Accountability Test will be a set-back for the maturing industry. CDBA urges the CDFI Fund to reconsider such a policy as harmful to CDFIs and communities.

CDBA shares FUND Consulting's concern that the proposed application emphasizes the qualification of census tracts when referencing accountable Board members' affiliations (page 71). One example is the option to identify Governing Board members accountable to an Investment Area through their affiliation with a third-party organization. Per the application, these Governing Board members must demonstrate that a majority of the third-party organization's activities are deployed among residents of qualified census tracts. However, the idea of tracking services in qualified census tracts is foreign to organizations that are not themselves CDFIs. It is therefore unlikely that any organization that is not itself a CDFI will be able to report whether activities are primarily being deployed among residents of qualified tracts. Moreover, it is not likely that third party organizations will be willing to share addresses of service recipients with an outside organization seeking this data for purposes of CDFI Certification. In this scenario, a CDFI might lose accountability for Governing Board members who hold senior positions at otherwise eligible community-based nonprofits that are unable to demonstrate their provision of services in this strict manner. This would be a grave loss.

7. Development Services

CDBA strongly opposes several of the proposed changes to Development Services. Despite CDFI Fund assertions to the contrary,[9] we believe that the CDFI Fund has indeed proposed very substantive policy changes to the Development Services portion of the proposed Certification Application. These changes are contrary to the spirit of the CDFI legislation and counterproductive to the stated purpose of the proposed change.

In recent years, the CDFI Fund appears to have shifted its preferences in funding applications and certification to Development Services offered in the form of structured classroom style training. CDBA recommends that all Development Services — especially those that have proven to be critical to low- and moderate-income communities and that do not fit the CDFI Fund's proposed, strict parameters — be valued equally.

Most notably, we strongly believe the most important and effective Development Service that CDFIs offer is one-on-one technical assistance (TA), provided in conjunction with a product or other service. Yet, in the proposed application, the CDFI Fund eliminates this foundational element of Development Service from eligibility by defining a Development Service *as "a formal stand-alone training, counseling, or technical assistance service . . . that the entity offers separately and distinctly from its other products/services"* (emphasis added by CDBA). We

[9] On slide 29 of the CDFI Fund presentation entitled, "Slides-CDFI Certification Application May 2020 FINAL," the CDFI Fund states, "No substantive policy changes are being implemented in the Development Services section of the CDFI Certification Application."

believe this proposed change is in direct conflict with how CDFIs operate and with Congressional intent as articulated in authorizing hearings in 1993-1994.

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 each customer's individuality. Some customers require support from a CDFI — but others do not. Some customers require and respond to structured, repeated classroom TA — but most do not. The definition of Development Services should remain highly flexible. In cases where the delivery of services may require additional context to evaluate, CDBA and its members recommend that the CDFI Fund seek input from the CDFI bank's Federal regulator on the institution's record.

Setting inflexible and onerous parameters for Development Services particularly harms the customers of depository CDFIs that offer a wide range of financial products and services. In fact, research — including recent work by Inclusiv and the Financial Health Network[10] — challenges the effectiveness of stand-alone financial education and counseling and instead emphasizes the importance and positive impact of delivering key messages at "teachable moments." Additionally, inflexible parameters harm every CDFI type that meets and services customers where they are, at their time of need. This necessarily includes loan funds and venture capital.

The CDFI Fund's clarifications in the proposed Certification Application further compound the problem. Specifically problematic are the provisions which impose onerous requirements on CDFIs:

1. "*Demonstrate that [the CDFI] maintain[s] control over the content and delivery parameters of their Development Service(s).*"
    a. This broad provision appears to implicitly prohibit CDFIs from receiving credit for delivering valuable and widely available financial literacy curricula, including, for example, the FDIC's "Money Smart" financial literacy program or third-party technology solutions such as Banzai which provide financial literacy education. These are common resources for CDFI bank customers precisely because they are effective, and are often integral to a CDFI bank's education platform, but because the CDFI does not "control the content," these services risk being excluded. Requiring CDFIs to "control the content" implies that all CDFIs, including small, resource-constrained organizations, should manage to create innumerable, individualized curricula. CDBA strongly urges the CDFI Fund to clarify that this language does not to prevent CDFIs from receiving credit for delivering content created by another entity.

[10] Partnerships for Financial Capability: Diagnostic Frameworks for Financial Institutions and Partners; Inclusiv and the Financial Health Network, 2015, www.inclusiv.org/wp-content/uploads/2015/09/Partnerships-for-Fin-Cap-Sept-2015.pdf

2. *"Make at least one Development Service available on an ongoing basis at least four times per year."*
    a. This provision creates unnecessary risk and tension, potentially forcing CDFIs to alter otherwise responsive, existing programs to fit an arbitrary format. For example, small, rural CDFIs may have found the local demand for formal Development Services only supports one, two, or three events per year. Under this provision, CDFIs will be compelled to fit a "round peg in a square hole." CDBA strongly urges the CDFI Fund not to require CDFIs to make formal Delivery Services available any minimum number of times, and certainly not "at least four times per year."

Moreover, the following provisions which exclude or prohibit certain services will also threaten the ability of CDFIs to serve their communities:

3. "*Training, counseling, or technical assistance not clearly intended to prepare consumers to access and/or be successful with a Financial Product and/or Financial Service offered by the Applicant."*
    a. This provision, like provision #1 (above), potentially prohibits CDFIs from delivering valuable and widely available curricula, including the FDIC's "Money Smart" financial literacy program, a commonly used resource for CDFI banks. Such curricula will be prohibited because the provision is broadly applicable to a number of products that may not be "offered by the Applicant," but which are often used in tandem or in a complementary capacity. For example, will the CDFI Fund really argue that loan funds should not deliver curricula that include information on savings accounts? CDBA strongly urges the CDFI Fund not to disqualify materials delivered by CDFIs that address products or services not offered by the applicant. Enacting this provision inhibits the flow of valuable information to many potential CDFI customers by unnecessarily restricting what information may be presented at any given time.
2. *"Information presented in newsletters, flyers, or online."*
    a. During this period of national emergency caused by the COVID-19 pandemic, CDBA strongly urges the CDFI Fund not to exclude any services that allow CDFIs to safely serve their communities at a distance, <u>especially through online delivery</u>, which has been deemed adequate for other essential services ranging from primary-level education to the CDFI Fund's own hearings.
3. *"Workshops for children or conferences/workshops for broad audiences."*
    a. Early childhood financial literacy is essential to establishing long-term positive behaviors in low- and moderate-income communities. Unfortunately, it has long been neglected in its most natural home — the elementary, middle and high school classrooms of America. This historic neglect has contributed to an environment of opportunity for predatory financial service providers —

pawnshops, payday lenders, high-rate credit card banks and check cashers — some of the very threats that CDFIs work to neutralize. CDBA strongly urges the CDFI Fund not to contribute to the perpetuation of financial illiteracy by excluding workshops for children from qualifying for Development Services.

4. *"Presentations made at one-off events (like annual fairs), or at regular events held by other entities."*
    a. Every contact that a CDFI makes with a potential customer is valuable to a low- and moderate-income community. Presentations made at fairs, such as health fairs, are opportunities for CDFI professionals to present valuable, if quickly digested content, that is otherwise unavailable in the physical environments of low- and moderate-income communities dominated by predatory providers such as storefront pawn shops, check cashers, and payday lenders, as well as a media environment which is exclusively the realm of large providers, mainstream or otherwise. Local fairs are opportunities for CDFI banks to deliver brief presentations on the value of safe and accessible bank products to low- and moderate-income communities whose members might be otherwise unaware of both the product *and* the CDFI. CDBA strongly urges the CDFI Fund not to exclude appropriately themed presentations made at one-off events (like community health fairs) from qualifying.
5. "Non-structured conversations with consumers on Development Services subject matter."
    a. It is unclear what constitutes a "non-structured conversation." However, "informal" conversations that provide timely, dispassionate advice are the core of a CDFI's relationship with its customers. Examples of these critical moments include explaining the benefits of a no-minimum balance checking account, outlining the relative costs and advantages of a longer loan term, or encouraging a customer to deposit a portion of a tax refund into a savings account. CDBA strongly urges the CDFI Fund not to invalidate the innumerable hours of mentorship shared during appropriately themed, non-structured conversations by excluding them from qualifying as Development Services.

The expansion of technology-driven products and services further complicates the question of what type of Development Services a customer needs or wants and how much and how often the customer uses those services. We encourage the CDFI Fund to allow CDFIs the flexibility to offer Development Services in the form most appropriate to each customer. Mandating how and when CDFIs provide Development Services as a condition for certification will: (1) unnecessarily increase the costs of delivering community development services *and* products; (2) put the CDFI Fund in the position of micromanaging how CDFIs serve their customers; and (3) remove the flexibility needed to tailor services to each customer. Such unnecessary, burdensome, and inflexible provisions will harm the customers living in the low- and moderate-income communities that CDFIs are dedicated to serve.

8. **Native American CDFIs**

In previous comments, CDBA has recommended that no changes be made to the CDFI Fund's current policies allowing Native CDFIs to self-designate. We strongly urge the CDFI Fund not to implement changes to board representation and activity thresholds. The CDFI Fund has proposed changes, adding Governing and Advisory Board representation requirements and activity thresholds, and has modified the definition of Native Communities.

By their nature, the two proposed options add reporting requirements and complexity to a process that already has more than its fair share. While we urge the CDFI Fund to adopt neither option, Option 1, "Governing Board Only" poses less of a burden than Option 2, "Advisory and Governing Board." Further, Option 2 is entirely untenable for Native CDFI banks.

Regarding Option 1, CDBA members note that most Native CDFIs are based in their local Native communities. Therefore, some CDBA members believe the burden posed by meeting the proposed Governing Board requirements[11] should be manageable. However, the fact remains that Native reserved lands are vastly under-resourced, and individuals seeking opportunity must often do so away from Native reserved lands. This reduces the pool of eligible Governing Board members who can meet the Accountability standard based on geography. CDBA urges the CDFI Fund to emphasize that individuals' "membership" in a Native Community is in every way adequate and coequal to "residency" (geography) to meet the Governing Board threshold.

Regarding Option 2, the cascading thresholds for qualification may pose a serious threat to the CDFI status of some Native CDFI banks.[12] As proposed, this option risks reducing crucial capacity-building support in the name of Accountability. The inflexible qualifications this option requires defy both the needs of, and the resources available to, Native communities. Native CDFI bank Advisory Board members often bring diverse skills, experiences, and contacts into these resource-starved communities. In many cases, these individuals are financial supporters of the Native CDFI. These Advisory Board members are also often not members of Native communities. These individuals are nevertheless extraordinary supporters who embrace the mission aspect of the CDFI. As such, part of the value these individuals provide is in directing resources *into* the Native community *from* other communities with more resources. The accountability of these individuals is evident in their support for the mission, and their participation on the Advisory Board is, in any case, subject to the discretion of management

[11] 33% of total Governing Board must be community members or residents of native communities, and 50% of that portion must be community members

[12] 60% Advisory Board must be of native community members or residents, 50% of the previous portion must be community members, and 20% Governing Board must be members or residents

and the Governing Board. CDBA urges the CDFI Fund to continue to allow Native CDFI banks to set their own priorities and recruit Advisory Board members from any community without regard to Native Community residency or Native Community membership.

In regards to the proposed percentage of activity that must be directed to Native Communities, CDBA agrees that directing at least 50% of Financial Products by dollar and number to Native Communities is a realistic threshold. However, CDBA urges the CDFI Fund to consider our recommendation in Section 5, "Target Market Test," that a more appropriate measure for Financial Services is "number of unique account *holders*," and to reconsider the threshold based on a CDFI bank market review subsequent to the submission of these comments.

Given the immense disparity in economic resources in Native Communities, the number of individual accounts may introduce a bias towards higher income and more affluent customers; it does not reflect success in providing services to lower income, less affluent customers. For the latter customer, one account may itself be a sign of success and a signal that a major hurdle has been overcome on the path to financial inclusion and stability. Native CDFI banks provide Financial Products in their communities by bringing deposits (in the form of Financial Services) from, quite literally, anywhere they can be sourced. A Financial Services threshold based on dollars and/or number of individual accounts risks severing resource-starved Native communities from essential funding sources which take the form of accounts sourced from higher income/higher asset communities.

CDBA does not propose any changes to the definition of Native Communities.

CONCLUSION:

In conclusion, the membership of CDBA fully appreciates the thoughtful consideration of the CDFI Fund and its staff in continuously seeking to improve the effectiveness of the CDFI certification process. We sincerely appreciate the opportunity to comment and offer feedback. We look forward to future discussion on these important issues.

If you have any questions, please contact Jeannine Jacokes, CDBA Chief Executive Officer, at 202-207-8728 or *jacokesj@pcgloanfund.org* or Brian Blake, Public Policy Director at (646) 283-7929 or *blakeb@pcgloanfund.org.*

Thank you for considering our recommendations.

The Membership of the Community Development Bankers Association

Bank of Anguilla (MS)
Bank of Brookhaven (MS)
Bank of Cherokee County, Inc. (OK)

Bank of Commerce (MS)
Bank of Franklin (MS)
Bank of Kilmichael (MS)
Bank of Lake Village (AR)
Bank of Moundville (AL)
Bank of St. Francisville (LA)
Bank of Winona (MS)
BankFirst Financial Services (MS)
BankPlus (MS)
Bay Bank (WI)
Beneficial State Bank (CA)
BNA Bank (MS)
BOM Bank (LA)
Broadway Federal Bank (CA)
Carver Federal Savings Bank (NY)
Carver State Bank (GA)
Central Bank of Kansas City (MO)
Century Bank of the Ozarks (MO)
Citizens Bank & Trust Company (MS)
Citizens National Bank of Meridian (MS)
City First Bank of D.C., N.A. (DC)
Commercial Bank, Kemper County (MS)
Commercial Capital Bank (LA)
Community Bank of the Bay (CA)
Copiah Bank (MS)
Farmers & Merchants Bank (MS)
Farmers State Bank (MS)
FBT Bank & Mortgage (AR)
First Bank (MS)
First Eagle Bank (IL)
First Independence Bank (MI)
First NaturalState Bank (AR)
First Security Bank (MS)
First SouthWest Bank (CO)
FNBC Bank (AR)
Friend Bank (AL)
GN Bank (IL)
Great Southern Bank (MS)
Guaranty Bank & Trust (MS)
Harbor Bank of Maryland (MD)
Homes County Bank and Trust Company (MS)
Industrial Bank (DC)

Industrial Bank of Chicago (IL)
Legacy Bank & Trust Company (MO)
M&F Bank (NC)
Merchants & Planters Bank (MS)
Mission Valley Bank (CA)
Native American Bank, N.A. (CO)
New Haven Bank (CT)
Noah Bank (PA)
OneUnited Bank (MA)
Optus Bank (SC)
Pan American Bank & Trust (IL)
Partners Bank (AR)
Peoples Bank (MS)
Planters Bank and Trust (MS)
Priority One Bank (MS)
Quontic Bank (NY)
Security Federal Bank (SC)
Security State Bank of Oklahoma (OK)
Southern Bancorp Bank (AR)
Spring Bank (NY)
Sunrise Banks, N.A. (MN)
Sycamore Bank (MS)
Texas National Bank (TX)
The Bank of Vernon (AL)
The Cleveland State Bank (MS)
The First National Bank & Trust (AL)
The First, A National Banking Association (MS)
The Jefferson Bank (MS)
The Peoples Bank (MS)
Tri-State Bank of Memphis (TN)
Union Bank & Trust Company (AK)
United Bank (AL)
United Bank of Philadelphia (PA)
United Mississippi Bank (MS)
Virginia Community Capital Bank (VA)