December 5, 2022

Via Electronic Submission

Mr. Spencer W. Clark
Treasury PRA Clearance Officer
Office of Management and Budget
U.S. Department of the Treasury

RE: Responses to Proposed CDFI Certification Application Requirements, Federal Register Document Number Vol. 87, No. 213 / Friday, November 4, 2022; OMB Control Number: 1559-0028

Dear Mr. Clark:

The members of the Community Development Bankers Association (CDBA) and the National Bankers Association (NBA) 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 November 4, 2022. 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. As of November 14, 2022, there are 177 banks and 143 bank holding companies with the Treasury's Community Development Financial Institutions (CDFIs) designation. CDBA membership comprises 67% of the total assets of the certified CDFI bank sector, and 55% of all CDFI banks by number. Many of our members are also Minority Depository Institutions (MDIs) and Native CDFIs.

NBA is the leading trade association for the country's MDIs. Our members include Black, Hispanic, Asian, Pacific Islander, Native American, and women-owned and operated banks across the country who are on the front lines of closing the racial wealth gap by providing access to credit to low- and moderate-income (LMI), minority, and underserved communities. Many of our members are also CDFIs.

Collectively, our members work to create real economic opportunity in CDFI Target Markets, including jobs, business expansion, affordable housing, and access to fair and responsible financial services. CDFI and MDI banks are often the only financial institution in their communities focused on making a difference.

We know that the coming decade will see exceptional transformation as CDFI and MDI banks leverage the capital from approximately $6.2 billion in equity investments via the U.S. Treasury's Emergency Capital Investment Program (ECIP). Investments have also been made and are anticipated from private sources, such as the FDIC's Mission Driven Bank Fund, the recently announced Economic Opportunity Coalition, and investments and partnerships encouraged by provisions included in the May 5, 2022 joint-agency Community Reinvestment Act(CRA) Notice of Proposed Rulemaking (NPR.) These investments complement the CDFI Fund's own programs, and are intended to leverage decades of work undertaken by CDFI Fund staff and CDFI practitioners to build the capacity of the CDFI industry, and reach scale.

GENERAL COMMENTS ON PROPOSED CERTIFICATION APPLICATION

Our members appreciate the hard work of CDFI Fund staff to support the CDFI industry. We appreciate the CDFI Fund's focus in this proposal on ensuring transparency and consistency through annual reporting, and on ensuring that communities across the nation are reliably served with responsibly priced and structured financial products and services.

We are grateful for the consideration CDFI staff have given to this process, and we acknowledge adjustments in the most recent proposal that respond to suggestions we have made in the past. We are also pleased the proposal retains some of the positive changes originally proposed in March of 2020.

We are concerned however, about several provisions that have been carried through from the 2020 proposal, as well as several new that are introduced for the first time in November, 2022. They provisions are potentially harmful and will force CDFIs to be less flexible and responsive to the needs of LMI communities and reduce the choices available to LMI consumers. Although several are presented as supporting critical consumer protections, we believe that many will have the opposite effect. In some cases, otherwise legal and often constructive products will be prohibited through "bright line" standards that are automatically disqualifying. In other cases, the CDFI Fund proposes to disqualify applicants after reviewing the answer to a narrative question, but it does not set clear standards for how to explain why an exception should be made, and does not identify a path to success. Some CDFIs, including active, effective lenders, may conclude that the burden of certification outweighs the benefits, and leave the program. *As a consequence, federal funds will cease to reach many vulnerable communities. Those communities will lose access to essential financial products and services, and they may be put at risk of exploitation when non-mission lenders enter markets to fill the void.*

CDFI banks are also concerned about the overall increase in data collection and burden to capture additional data. In the case of currently certified CDFIs, the proposal requires the submission of three years of historic data. There is a real risk that that the volume of data required will overwhelm existing CDFI data and geocoding systems. Some CDFI banks originate hundreds of thousands of loans each year. Technology investments are expected to further enhance many CDFIs' ability to scale, which will continue to increase this volume. The scale is critical to their business model, and fundamental to the CDFI mission. However, *the CDFI Fund's current data systems to capture census tract information do not support this level of activity and are problematic for banks with a large quantity 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.*

A serious question also hangs over the large number of CDFI depositories that received investments from the U.S. Treasury under the Emergency Capital Investment Program (ECIP). CDFI banks and credit unions will be impacted by the ECIP requirement to retain their CDFI certification. Meanwhile, ECIP recipients continue to await final ECIP reporting requirements. We are very concerned that *the CDFI Fund is proposing to judge currently certified CDFIs against new rules based on past activity, while also introducing new rules that make maintaining CDFI status untenable*. *It is conceivable that the CDFI Fund's new rules will throw the massive, transformational ECIP program into disarray, scuttle years of work and preparation, and deny countless CDFI Target Markets access to the capital that has only recently been secured for them.*

SPECIFIC COMMENTS ON PROPOSED CERTIFICATION APPLICATION

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

1. **Applicant Basic Information**

<u>*"Board and Executive Staff Demographic Information," questions BI-DI1 through BI-DI20*</u>

The November 2022 proposal adds a change that was not present in the March 2020 proposal: the addition of questions to collect demographic data on board members and executive staff of CDFIs. We recommend that these questions be made voluntary.

This data is not necessary to fulfill any current, ongoing certification or program requirements relevant to CDFIs. Some individuals will decline to answer. *Until final details of the CDFI Fund's Minority Lending Institution (MLI) Designation are published, these questions should be voluntary, and enhanced with fields to note where an individual declines to answer.*

<u>*"Financial Products and Financial Services Basic Information," questions BI-FP01 through BI-FS04*</u>

"Basic Information Table 1: Financial Product Information" is new in 2022*. We urge the CDFI Fund to remove this table from the application. Unfortunately, because the questions are unanswerable, even if reconfigured it would not serve a clear purpose in providing "basic information."*

Specifically, the table asks applicants to organize their financial products in a manner that does not reflect how CDFIs offer products. While it is true a CDFI may offer a specific product with an assigned name (e.g. "Credit Builder Loan") and that product may have defined parameters, the hallmark of CDFIs is their flexibility and responsiveness to the needs of customers. CDFIs often make loans with characteristics that may not have previously existed, and may not exist again, because the loan is designed to respond to a customer's specific, timely need. Simply, the business of CDFIs is more responsive and fluid than the table allows for. It would be impossible for many CDFIs to complete the table, as potentially hundreds of loans would fall into their own product category.

Further, is not clear what purpose the product parameters requested are intended to serve, nor how they would be useful to the CDFI Fund. In the event strictly defined products do exist, these products are not static. Interest rates change with the financial markets, financing amounts vary as lending limits change with the needs of customers and the capacity of institutions. In a short period of time the information collected could be stale or irrelevant. Perhaps most importantly, the level of complexity in this table, even if accessible, would create an enormous burden at a time the CDIF Fund should be working to increase simplicity.

2. Legal Information

The CDFI Fund should take the opportunity to streamline documentation. The Legal Information section is another a missed opportunity to take advantage of technological advances and save both applicants and CDFI Fund staff resources.

The Legal Information, while substantively appropriate, still requires applicants to devote significant time to uploading redundant documents that are already required elsewhere. *The CDFI Fund can achieve a similar result by relying on 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 believe that the Primary Mission Test is the most important tool for safeguarding the integrity of the CDFI industry. *We agree with the CDFI Fund on its policy goals to ensure that malign actors are not certified as CDFIs, and that consumers are not just protected, but also well served.* Unfortunately, we must strongly disagree with much of the proposed approach to revising the Primary Mission Test. Simply, *many of the proposals go beyond sensible consumer protections, and the bright line restrictions should be replaced with a Consumer and Small Business Protection Attestation and active monitoring for predatory behavior by the CDFI Fund.* Importantly, some of the proposals are new in 2022, and we must urge the CDFI Fund to consider that these new proposals were available for only a short time for CDFIs to review and consider.

CDBA and NBA generally support:

- Setting high standards that are responsive to individual CDFIs' operating environment to help identify distinctions between helpful and harmful activities;
- The CDFI Fund's authority to disqualify applicants that demonstrate behavior contrary to the mission of community development finance;
- The holistic evaluation of answers to questions to ensure that individual circumstances are given adequate consideration. Borderline, unfamiliar, or novel product features that are within the scope of bank regulatory and other consumer protection rules should not be subject to blanket disqualification.

Ultimately, the CDFI Fund has taken some questions related to Primary Mission in the 2020 proposal and turned them into narrow, inflexible, automatically disqualifying standards in 2022. *With these questions, the CDFI Fund will prohibit practices that are not only legal or mission-neutral, but also many that are beneficial and support a community development finance mission. By setting standards in this way, the CDFI Fund risks excluding many excellent CDFI products from the market, and potentially discouraging the institutions that offer them from participation in the program.*

In the case of the regulated depositories, many of the "bright lines" are also unnecessary, and their redundancy creates a burden. 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, state banking authorities, and the Consumer Financial Protection Bureau) that safeguard consumers from predatory or abusive products and practices. *The agencies are vigorous in their enforcement of these policies, and their enforcement makes these questions redundant and unnecessary. Where the federal regulators have enforcement authority, the CDFI Fund should defer to their oversight.*

Rather than the proposed bright line standards, we believe *the CDFI Fund should require every CDFI annually to sign a Consumer and Small Business Protection Attestation. The CDFI Fund should also grant itself the broad authority to deny or revoke certifications for those violating the letter or spirit of the Attestation. The CDFI Fund should also clearly put all parties on notice that it has the right, at its discretion, <u>to look outside</u> of the materials provided by an Applicant seeking certification or recertification.* 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. If an entity's products, services, or practices appear predatory or are legally questionable, the Fund can, and should, deny or revoke certification.

We continue to believe that this is the most effective and manageable approach to achieving the apparent goals of the application revision, without the risk of a blanket prohibition on practices that are appropriate and beneficial.

ENFORCEMENT AUTHORITY

DEPOSITORY CDFIs: *In the case of depository CDFIs, we believe the CDFI Fund should rely on the regulatory agencies to monitor these entities for compliance with the relevant consumer protection statutes and regulations.* CDFI banks and credit unions represent half of the CDFI industry and are subject to oversight by their primary regulators and the CFPB. Consumer protection policies are enforced vigorously by the agencies and constitute a powerful safeguard. *The CDFI Fund should consult directly with a depository's 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, the Fund may suspend or revoke a certification.* Below we outline the 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.

PRIMARY MISSION APPLICATION QUESTIONS – RESPONSIBLE FINANCING PRACTICES

We believe that several of the questions proposed in the Primary Mission portion of the application are unnecessarily proscriptive. As discussed above, depository CDFIs are subject to numerous regulations by their primary regulators.

To illustrate, we re-include from our 2020 letter 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. Thus, depository CDFIs should be exempt from these questions. 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	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,

	Compliance Examinations[1]	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)[2]	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)[3]	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 loan products that harm consumers.	OCC/FDIC/FRB Small Dollar Loan Guidance: "Interagency Lending Principles for Offering Responsible Small-Dollar Loans"[4]	The interagency lending principles specify the positive characteristics of a successful small dollar lending program, specifically loan structures, pricing, underwriting, marketing and disclosures, and servicing and safeguards

Ability to Repay - Question PM 12

Proposed question "PM 12" is new in 2022. This "bright line" question introduces a test that is too narrow. The test as written will limit access to entirely legal and genuinely impactful loans. *We urge the CDFI Fund to treat the question of "ability to repay" with more nuance and*

[1] 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/

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

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

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

flexibility, which is appropriate given the existing regulatory exemption for CDFIs in regards to mortgage lending. This question reads:

> "Beginning, at a minimum, 12 full months immediately prior to submission of the Application, do the Applicant's underwriting standards for each of its consumer, mortgage, and/or small business loan products include measures to ensure the borrower has an ability to repay the loan according to the terms of the loan, meet any of the borrower's other major financial obligations, and still pay basic expenses, without having to reborrow or refinance?

An applicant that answers question PM 12 in the negative (meaning, the applicant does *not* apply ability to repay (ATR) standards in certain categories of its underwriting) will be passed on to a narrative section. The narrative question states, "An Applicant that does not consider a borrower's ability to repay loan *may* be determined ineligible for CDFI Certification." This creates several problems.

First, 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. *We urge the CDFI Fund to explain what standards will be applied to the narrative portion of this question so that CDFIs may understand how to operate under the CFPB's ATR/QM exemption for CDFIs without being disqualified from CDFI status.*

Second, as the CDFI Fund certainly knows, CDFIs are *explicitly* exempted by the Consumer Financial Protection Bureau from requirements to apply ATR standards in underwriting for home mortgage lending. The CFPB's ATR/QM rule exempts CDFIs because of these lenders' historic, demonstrated need for flexibility in working with people without traditional income documentation. *In this question, the CDFI Fund appears to assume for itself an authority it does not have. We do not believe the CDFI Fund should not be applying a broad ATR test to CDFI Certification, given the CFPB's explicit exemption of CDFIs from this particular mortgage regulation.*

Third, this test has the potential to damage LMI communities and stifle useful and responsible products. This is particularly true in small dollar lending, but also for credit building loans, overdraft, earned wage advance loans (offered in partnership with employer's HR offices)[5], and small business and small farm lending. These loans may all consider some aspect of an individual's creditworthiness, but would not meet the narrow requirements of an ATR standard based on that applied to qualified mortgage lending. The requirement is simply too narrow to capture the wide variety of credit products that very reasonably do not require an ATR standard.

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[5] See Spring Bank's "Employee Opportunity Loan", offered in partnership with local employers: https://www.spring.bank/opportunity-loan/

For example, some CDFIs participating in the CDFI Fund's Small Dollar Lending Program, (SDLP) report that while they verify that borrowers have a recurring source of income, they do not assess the borrower's ability to repay. The reason for this is primarily because CDFIs are trying to offer an affordable and practical alternative to the payday lending market, where speed and convenience are prized by customers at the expense of affordability. To enhance the small dollar product, CDFIs couple the loans with financial literacy training and the establishment of a savings account. The new certification rules would make the CDFI alternative to payday loans unworkable in many circumstances.

Another complication is CDFI banks' ability to offer financing to members of traditionally underserved communities. LMI small business owners, small farmers, and individuals without W2 regular income often have a difficult time documenting their income. For example, consider a small farmer selling hay from their fields. That income is typically cash income, but it provides the farmer working capital with which to pay personal living expenses and debts throughout the year. Many individuals and small business owners in LMI communities across the nation work for cash yet may have strong histories of payment. While this makes it difficult to "verify" income and ability to repay, it does not mean that income is not present or that repayment cannot be made. The relationships CDFI's have with their customers reflects an understanding of their individual situations, and allows CDFIs to be flexible in helping them with financing.

This provision will also force CDFI banks to undertake expensive, uncertain, time consuming projects to reconfigure systems. To our knowledge, ATR/QM testing is only configured into mortgage software used for processing mortgage loans. Programs used for processing all non-mortgage consumer loans and small business loans are unlikely to have this feature configured. It is not clear how, and at what cost, providers would make required changes, even considering if they would be willing to do so. *Because it is not clear how a CDFI may operate under the ATR exemption without being disqualified from CDFI status, we respectfully request that the CDFI Fund continue to accommodate a nuanced view of CDFIs' underwriting.*

<u>Military Annual Percentage Rates (MAPR) - Questions PM 13 and PM 14</u>

CDBA and NBA support the CDFI Fund's intention to ensure that products offered by CDFIs are affordable to end users. We agree that it is useful to identify a national rate cap, which, if exceeded would require CDFI certification applicants to justify a loan's pricing. Unfortunately, *the CDFI Fund's proposal to adopt a strict MAPR calculation creates several problems that can be avoided by adopting the existing APR calculation. A strict application of any standard can have unintended consequences.* Context is important in assessing whether a product is appropriate or harmful to customers. *For example, very small loans with modest fees can trigger a 36% APR. We believe 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.*

First, the CDFI Fund should not tie an affordability test specifically to the MAPR. While lenders nationwide are prepared to track and calculate a 36% *Annual Percentage Rate (APR)*, the *MAPR* calculation is *non-standard*. As we expressed in 2020, all depository CDFIs are already subject to calculation of 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, but MAPR is much more inclusive of fees *and even other products, such as credit life insurance*. TILA accomplishes the same objective as MAPR of ensuring transparency in pricing. Also, very few CDFIs engage in lending covered under the Military Lending Act (MLA). This makes MAPR an inappropriate standard to apply to all CDFI lending.

MAPR is also expansive in ways that will impact the delivery of other products. For example, some CDFI banks offer a product called credit life insurance. Credit life insurance premiums are included in the MAPR calculation, but not included in the traditional APR. Credit life insurance is a voluntary, specialized type of policy intended to pay off specific outstanding debts in case a borrower dies before a debt is fully repaid. Forcing CDFIs to use the MAPR calculation will cause CDFI banks to stop offering credit life insurance, which will ultimately harm target market consumers because CDFI loan applicants may unable to get traditional life insurance due to credit issues, health issues, etc. If CDFI banks stop offering this product, survivors will be forced to sell assets or default, because the credit life applicant is often the primary income source for the household.

Requiring CDFIs to comply with two competing regulations (TILA and MLA) will also 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 to allow for fees to be calculated under the MAPR standard even if the loan is not a covered MLA loan to a covered borrower. Instead of MAPR, we strongly recommend all CDFIs use the widely accepted TILA standards for calculating APRs.*

Further, *we urge CDFI Fund to provide CDFIs greater clarity on what will be considered disqualifying pricing. It is not sufficient to allow CDFI certification applicants to provide reasons for pricing a loan in excess of 36% without providing them with a standard to write to.* For example, will five percentage points in excess of the cap be permitted? In what circumstances? In the absence of our proposed Attestation, these questions must be answered. *Even as the CDFI Fund goes to lengths to ask follow up questions in regards to this test, we urge the Fund to continuously gather information about products and assess context in determining whether a product is aligned with market standards and/or will have disproportionately negative impact.*

Mortgage Loan Product ATR/QM Exempted Mortgage Loan Attributes – Question PM 16

CDBA and NBA strongly disagree with the CDFI Fund’s assertion that specific product attributes that are otherwise exempt from the ATR/QM rule can, or should be *automatically* disqualifying. While there are strong consumer protection arguments in favor of applying a “close read” to loans offered by CDFIs under the ATR/QM exemption, we believe this is the wrong way for the CDFI Fund to apply consumer protection standards.

First, *it is important for the CDFI Fund to clarify whether the prohibition on certain "mortgage" attributes applies to commercial mortgages as well as consumer mortgages. This is not made clear in any of the provisions of PM 16.* While we explain below that most of the provisions should not be subject to a blanket prohibition for consumer products, it is equally important for the CDFI Fund to clarify that this section is *only* addressing consumer products. For example, New Markets Tax Credit (NMTC) program participants offer interest-only loans with subsidized rates to small Qualified Low-Income Community Investments (QLICIs) such as businesses. They also occasionally make interest-only leverage loans into NMTC projects. If "mortgage" in PM 16 is read to apply to "commercial" mortgages it will undermine many valuable commercial projects, including those made in support of the CDFI Fund's own program.

Second, the proposed application applies strict "bright line" standards that will restrict borrower access to both legally neutral and beneficial mortgage loans. *This standard is proposed in direct contravention to a specific regulatory exemption that was made specifically for entities that vary widely in their business practices, operating environment, and level of regulatory oversight.*

The CFPB exempted CDFIs from the ATR/QM rule because the vast majority of CDFIs have continually demonstrated their ability to work responsibly and provide flexibility for people without traditional income documentation and with particular needs.

For example, LMI individuals can benefit when a CDFI provides a bridge loan for buying a home. A bridge loan can be very beneficial for LMI and low asset home buyers in illiquid markets and markets with sharply rising home prices, who need to cover expenses until an existing home is sold. In order to ensure their affordability, these bridge loans may be structured as balloon loans, have an interest only provision, and may not be underwritten at the maximum rate for five years in the future. None of these provisions are inherently damaging or predatory. Construction loans for example are also, by definition, an interest only phase of home ownership. *Given the national crises in housing affordability, CDFIs should be expected to engage with the housing market without fear of decertification. These are appropriate and useful product attributes for lenders helping LMI individuals or those with non-standard income. If the CDFI Fund establishes a blanket prohibition on loans with these features, many impactful loans will be removed from the market.*

One CDBA member notes that in their market, the average home price is $40,000 to $50,000, and the current mortgage regulations already make it difficult to make home loans in that price range. A balloon note restriction will make it more difficult, as balloon notes also help the bank manage mortgage rate risk. Due to regulatory safety & soundness considerations, banks can be criticized for taking on "too much" interest rate risk by fixing a loan for 15, 20, or 30 years and holding those loans. Many smaller banks, rural banks, and banks without conforming mortgage loan capabilities can only offer loans with a fixed rate that must reprice within 5 or 7 years. *CDFI banks may be guided by the economy or regulatory guidance away from longer term loans – balloon loans allow the bank to manage mortgage rate risk.*

In practice, when a balloon note expires, the loan is renewed for another term. Further, when the balloon loan is renewed it is not necessary to execute and record a new mortgage agreement. Instead, the customer signs a new promissory note or executes a modification agreement that extends the maturity date of the existing note. The renewal process requires a minimal amount of new paperwork with little or no fees attached. A new appraisal may not be required if new funds are not advanced. Also, the renewal of the balloon loan does not result in the amortization period starting anew. This practice keeps costs minimal for the customer, helps the bank manage risk, and keeps the customer out of expensive finance companies and title pawns. *If the CDFI Fund is concerned about abuse of these products, it should use its authority to determine whether a lender engages in abusive practices, such as making "evergreen loans" meaning the borrower gets a loan, pays interest and rolls the loan on forever. However, this is a practice that is prohibited by the banking regulators, and would not be part of a CDFI bank's mortgage lending tool kit.*

A CDFI may also responsibly make an interest only loan for small businesses. While Question PM 16 refers to "mortgage" lending, this is a further example of how certain practices that the CDFI Fund intends to prohibit, can actually generate real value. In the case of interest only small business loans, a payment schedule is tied to the source of repayment. For example, if a contracting business needs to borrow money in advance of an upcoming project where they will collect a lump sum payment at the end of six months, a CDFI will provide a single payment loan with monthly or quarterly interest-only payments.

Further, we are uncertain what the CDFI Fund's goal is in prohibiting mortgage loans with terms with an original maximum of 30 years. *CDFI banks can, and do, make Fannie Mae and Freddie Mac conforming 30 year loans – these loans are then sold into the secondary market. We can see no clear community development benefit to prohibiting this practice.* One CDFI industry colleague has stated this well:

> "While longer terms may reduce the amount of equity built through mortgage amortization, that's often a secondary reason for people to become homeowners. In markets where average rental rates are increasing by double digits annually, the financial benefits of homeownership may lie primarily in the fixed monthly housing cost. Urban Institute researchers (among others) have found that the economic gains associated from homeownership lie as much (if not more) with the monthly savings in housing costs as with property appreciation or mortgage amortization."

Prohibiting adjustable rate mortgages underwritten at less than the maximum rate in the first five years is unlikely to protect CDFI borrowers, but is likely to push borrowers out of CDFIs and toward unregulated lenders. For example, *the proposed prohibition against underwriting at less than the maximum rate also doesn't allow for the assumption that a borrower's income will increase over the loan period. Wage growth is natural, and only underwriting the loan at current income but using future rates doesn't make sense* in these circumstances. Regulated lenders will simply not offer the product if they cannot make reasonable projections.

We strongly urge the CDFI Fund to allow loans with balloon notes and interest only features, not to require income verification, not to prohibit underwriting at less than the five year maximum, and not to prohibit loans with an original maximum term of 30 years. Provided that the CDFI offers full disclosure of the ramifications of the different product features, and that it provides the borrower with necessary counseling / education, the particular product offerings ultimately should be between the CDFI and the borrower. Without the support of the provisions above, it will be exceedingly difficult (if not impossible) for many otherwise qualified low-income borrowers to afford to purchase a home.

Small Business Loan Products Disclosures – Question PM 17

New in 2022, the CDFI Fund 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, we do not believe that standards for small business lending disclosure should be set for the purposes of CDFI certification.* As above, we strongly object to the CDFI Fund assuming what amounts to a regulatory authority for itself, in opposition to established regulatory authorities with clearly delineated responsibilities.

We urge the CDFI Fund to address concerns about small business lending by adopting our proposed alternative in the form of the Consumer and Small Business Protection Attestation, which can be independently verified through third-party sources, rather than this narrow, automatically disqualifying approach. If the CDFI Fund wishes to encourage better disclosures to small businesses, we suggest that the Fund incentivize such practices.

Sale of Charged off Debt to Debt Buyers – Question PM 19

Also new in 2022, the CDFI Fund proposes to automatically disqualify applicants based on their response to a question related to the sale of charged off debt. A related question was proposed in a general way in 2020.

We strongly believe that consumers and small business lenders should be protected from abusive debt collection practices. Unfortunately, the proposed new standard makes no acknowledgement or distinction between types of debt (consumer or small business), standards for debt collection practices, or the role of banking regulation in ensuring consumer protection. CDFI banks are subject to regular examination by their regulatory authorities, both state and federal, on their compliance with the requirements of UDAAP, which prohibits harassment of borrowers. We believe these protections are strong, but can be enhanced by the CDFI Fund without a blanket prohibition. Where an existing level of regulatory protection already exists, we believe that standard should lead. *If the CDFI Fund wishes to ensure an additional level of consumer protection for CDFI customers, we urge the Fund to avail itself of public resources such as* *databases of consumer complaints, and to restrict access to funding and programs for lenders with a track record of abusive practices.*

Community Reinvestment Act (CRA) Rating – Question PM 21

CDBA and NBA members fully support the purposes and objectives of the CRA, and we agree in principle that a CDFI bank that has not earned a minimum CRA rating should be required to reach that standard before having access to CDFI programs and funding. *However, the comments submitted to the regulatory agencies regarding CRA reform are still being adjudicated. As long as the agencies proposals' and the public's comments are being adjudicated, a bank's CRA performance should not be a standard for evaluating CDFI Certification.*

However, confusing as it may be, some of the common goals of the CRA and CDFI certification do not overlap in practice. The CRA is an affirmative obligation applied to all (*and only*) banks; CDFI status is a privileged recognition of a distinct set of business practices that applies to financial institutions of many types.

The regulatory agencies have been involved in an ongoing process for revising the standards for CRA compliance for many years. A recent proposal required comments to be submitted in August of this year. There is significant uncertainty about the outcome. We do not know the timeline for adjudicating those comments, or agency plans for returning to the public for comments on any revisions. Further, we know that many of the changes could dramatically influence the way that banks of all sizes and business models are examined for CRA compliance. *We share widespread concerns that effects of newly complex elements of CRA reform will have far reaching, unforeseen consequences.*

It may be that once new CRA regulations are in place, those standards will complement the purposes and mission of the CDFI Fund. However, until the final rule is published, it is not appropriate for a question related to CRA performance to be included in the standard for CDFI certification, without recognizing the uncertainty CDFI banks operate under. In order to recognize that uncertainty, we believe that *the CDFI Fund should wait until the new CRA rules are in place and banks have time to adjust to them. The CDFI Fund should institute a transitional grace period for CDFI banks of at least three years after publishing the final CRA rule for banks to adjust operations to meet the new standards. Further, the CDFI Fund should embrace a cure period for CDFI banks after their first CRA exam under the new regime, under which a CDFI bank receiving a rating of less than satisfactory, may remain certified through the next CRA exam period, but be restricted from accessing CDFI programs*. If the CDFI bank fails in the next CRA exam to achieve at least a satisfactory rating, the CDFI Fund may then initiate decertification.

PRIMARY MISSION APPLICATION QUESTIONS – FINANCIAL SERVICES

New in 2022, the CDFI Fund proposes asking depository applicants to select from a list of product features associated with depository products that appear either to 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 strongly 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, as these are not defined terms - what triggers decertification cannot predicted.

More challenging, while we can broadly gauge which category a service might fall into (e.g. “safety” vs. “affordability”), the application sets no standards or expectations for applicants to evaluate these services. Applicants cannot tell if there are consequences to answering the questions in one way or another. This is in contrast to other questions where a bright line is imposed, or another serious consequence is suggested. In this section, there are no clear consequences to many answers, but value judgments are implied. The CDFI Fund should reevaluate why these question are posed.

If this section is intended to identify products that are contrary to consumer protections, then we recommend that the CDFI Fund address this as we propose above with the Consumer and Small Business Protection Standards and Attestation. If the CDFI Fund wishes to encourage certain product attributes, it should make clear what these are, whether there is a baseline, and in what combination the features may be issued in combination with other features. For example, if the goal is to encourage certain beneficial service features, is it sufficient for an applicant to offer just one service with one feature? Should certain features be offered in combination with others? What are the consequences if an applicant offers no services with objectionable features, but also offers no services with features that advance a community development purpose? In reviewing this topic, it is important for the CDFI Fund to avoid being inflexible. As with financing, flexibility and responsiveness are the hallmarks of the CDFI industry. CDFI banks respond to the depository needs of their customers in a great variety of ways, and all of their financial services are, by definition, subject to oversight by banking regulators.

4. Financing Entity Test

CDBA believes that the current presumption of Financial Entity qualification for depositories should not change. We are pleased that the current proposal retains this provision.

However, CDBA is concerned about provisions directly influencing non-depositories’ relationship with the 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 compliance with the “predominance” test.

First, 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. As in other cases, more administrative burden and complexity will encumber the smallest CDFIs. These CDFIs are often closest to CDFI target markets, but CDFIs of all sizes will be heavily burdened or forced to make binary decisions about certain activities. For example, more resources that ought to be directed to serving communities will go to administering CDFI Fund compliance. Valuable resources or services that support a community development mission, such as capacity building, may have to be reevaluated.

Second, this burden may create disincentives for CDFIs from offering mission-aligned non-financial products that support CDFI Target Markets, or even the broader industry. One prominent example is the Policy Map mapping and analytics platform service that was first developed by a CDFI. This service is now widely used across the CDFI industry. It is not clear that this service could, or would have been developed by a CDFI under the proposed "predominance standard." It is time consuming and expensive to develop software (or any new service), market and distribute it, and provide support services. We are concerned that the level of effort that will be put into ensuring compliance with the uncertain "predominance" standard may discourage innovative activities. A measure of predominance that focuses on staff resources will not accurately reflect the value of the service. The standard also does not recognize that technology investments can reduce the staff required to manage financing activities. This can free up resources for other valuable innovations, but will unbalance CDFIs' "predominance" measure.

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, like Policy Map, from being developed in house by CDFIs that know their market and their field, and are willing to innovate in the service of both.

5. **Target Market Test**

NEW OPTIONS FOR DEPOSITORY CDFIs

CDBA welcomes the proposed change (retained from 2020) that allows depository CDFIs some flexibility in meeting the Target Market standard for Financial Products based on dollar volume and total number, as long as the standard for Financial Services is met based on total unique depository account holders. *We especially thank the CDFI Fund for acknowledging our comment in 2020 that the threshold for Financial Services should be "number of unique account holders." This is a better metric will contribute to a certification process that more accurately reflects the business model of CDFI depositories.*

CDBA also supports 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.

TIME PERIOD

Over the long term, CDBA supports the change to the Target Market Test whereby the Fund will assess compliance based on a three-year average. However, we have concerns about how this 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 historic 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. While we cannot imagine that this is the CDFI Fund's intention, that is what the application plainly suggests.

CDBA is also concerned that the application allows a lower standard for new certifications. As proposed, new certifications will be based on activity over only a 12-month period. 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.*

Given the proposed changes, *currently certified CDFIs should only be evaluated on activity conducted after an adequate period of time has passed from the publishing of the final rule. If the CDFI Fund wishes to put the new application in practice as soon as possible, compliance for currently certified CDFIs would be better assessed on a two year time frame through the last day of the second fiscal year completed after the final standards have been published. This would allow one year for existing CDFIs to change their procedures, adjust their product design and market engagement, and one additional year to put them into practice.*

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 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 and NBA appreciate the CDFI Fund's continued inclusion of a path to certification via service to Customized Investment Areas (CIAs) that consist of both qualified and non-qualified census tracts. *We must however urge the CDFI Fund to refine its approach to the CIAs. As proposed, this approach will force many changes in rural communities that will hurt CDFI 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. 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. CDFI banks are also concerned about the choices this provision may force for lenders in certain circumstances. For instance, if a lender receives an application from a qualified borrower in their CIA that doesn't 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 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. This lending should not be excluded.*

We echo the comments of colleagues at Sones & White Consulting that it is very important for non-Metro counties to be counted as basic units on an equal basis with census tracts for the purpose of defining Eligible Markets. Counties in rural areas are very large and encompass geographies very far from urban places and many non-Metro counties are comparable in population to individual census tracts in Metro areas. In non-Metro areas therefore, it is not feasible for regulated institutions, which traditionally provide a full array of loan and deposit services to the entire community, to pick and choose between individual census tracts. Further, far more than in metropolitan areas, activities that benefit one part of a non-Metro county benefit the whole. For example, a small business loan to a grocery store in a non-metro area has an impact across the whole county because the county's population is too small to support many grocery stores. For these reasons, it is particularly important for regulated institutions serving non-Metro counties to be permitted the option to consider these counties.

Minimum Threshold

CDBA strongly opposes increasing the Target Market test above a 60% minimum level for qualified census tracts and non-Metro Counties within CIAs. The proposed requirement will force CDFIs into even more arbitrary and shifting borders. *We urge the CDFI Fund to modify the requirement that 85% of activity be directed to qualifying tracts in CIAs before activity in non-qualifying tracts may count.*

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 the additional 85% threshold removes that flexibility. Ideally, *all lending and investing within a CIA should count toward Target Market lending. If the CDFI Fund insists that a standard first be met within qualified census tracts before activity in non-qualified tracts can be counted, we believe that standard should be 60%, and not 85%.*

LOW INCOME TARGET POPULATIONS (LITP)

LITP Methodologies and Proxies

We are glad that the CDFI Fund has developed a list of proxies for service to LITPs, but *we believe the CDFI Fund should do more to recognize the validity of end users to qualify for a Low Income Target Population (LITP).* 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 creates 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.*

In the current application, several proxies that are both common and serve as excellent standards are not included on the approved list. *We urge the CDFI Fund to include the following* *proxies on the list, as these are well-known, documentation is available, and CDFIs should not have to go through the process for new approvals:*

- Medicaid/Medicare recipients for health care;
- Low Income Housing Tax Credit financed properties for residents of affordable housing;
- Free/reduced lunch percentage of students for financing in communities served by public schools.

The CDFI Fund should also work to ensure that CDFI financing continues to be directed to several types of organizations and projects / facilities that serve predominantly low-income people but that do not obtain verifiable data on participants' incomes. These include:

- Community health centers
- Food banks / food pantries
- Homeless serving organizations
- Vocational training / job placement organizations

Because such entities do not document / verify that they are serving predominantly low-income people (and practically may not be able to do so), they may be hard-pressed to obtain CDFI financing unless they are located in an eligible investment area and/or serve predominantly racial and ethnic minorities. While many of these and similar human service organizations may well serve those latter markets, there are likely instances of such organizations being located outside of a qualifying census tract and serving predominantly non-minority low-income populations.

Supporting Innovative and New Methodologies for LITPs

As technology is rapidly changing how financial products and services are delivered using online and mobile channels, *we urge 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.

Nationwide, both conventional and mission-driven banks are increasingly taking advantage of the ECOA exemption under the Special Purpose Credit Program (SPCP). Participants in the Treasury's Emergency Capital Investment Program (ECIP) benefit from a similar protection. As we have previously urged, *we hope that the CDFI Fund engages in 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. Unfortunately, with the exception of home mortgage loans made under the Home Mortgage Disclosure Act (HMDA), certain lending under the auspices of the regulatory exception for SPCPs, and an exception for activities undertaken by participants in treasury's ECIP, 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.

We suggest 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.*

COMPILING TARGET MARKET DATA

We note the following proposal and ask that the CDFI Fund clarify its meaning:

> "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 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 a purchase of 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% 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?

6. Accountability

We are encouraged that the CDFI Fund has taken steps to accommodate differences between regulated and non-regulated CDFIs in determining the right balance of "Accountability" representatives. In particular, we thank the CDFI Fund for establishing an "Advisory Board Only" option for holding companies and insured depositories to establish accountability.

However, we remain very concerned that the CDFI Fund's Governing and Advisory Board Target Market Accountability Test proposal remains too narrow and rigid. CDBA recommends that the CDFI Fund take a more flexible approach. 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.

KEY GOVERNANCE ISSUES

Board Membership as a Means of Accountability.

The CDFI Fund proposes "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."

CDBA strongly opposes such a prohibition. *It is a good and 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.* CDFIs of all types work hard to build relationships/partnerships in their communities, and hope that the people they invite to help meet the accountability requirements *will become customers* and engage with us. This is, in itself, *an accountability enhancer*, and not a detraction.

Mission-Driven Organization Executive Level Staff

Under the new proposal, *if an applicant relies on its relationships with a third party, mission-driven organization to contribute to its accountability, only Executive Staff may count. This is an unnecessary and potentially damaging restriction.*

Both the "board membership" prohibition and the "executive staff" requirement risk two negative outcomes. First, individuals with attributes and skill that would otherwise support goals of the Accountability Test will be 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, current practice has proven to strengthen the CDFI industry, promote sharing of best practices, and enhanced Governing Board knowledge of how to serve Target Markets. Prohibiting CDFI board appointees from meeting the Accountability Test and requiring that mission-aligned organizations only be represented by executive staff will set back our maturing industry. CDBA urges the CDFI Fund to reconsider these policies that will be harmful to CDFIs and communities.

Financial Interest Policy

New in 2022, the CDFI Fund proposes a policy that is intended to "prevent board members with certain types of financial interest in an organization 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." *This policy conflates "financial interest" with "conflict of interest" in a way that will severely impair the ability of many CDFIs, especially regulated depositories, to connect with their communities. Financial interests are not necessarily conflicts of interest. It is standard for CDFIs of all types to have a policy in place to guard against conflicts of interest, but in many cases, it is good and valuable for Governing*

Board or Advisory board members to have financial interests in their CDFI. In some cases, it may even be a requirement that is fundamental to the institution's governance.

For example, at CDFI banks, institutional financial interests for board members, board members' family, or board members' employers, are already subject to regulations (Federal Reserve Board Regulation O) which "prohibits a member bank from extending credit to an insider that is not made on substantially the same terms as, or is made without following credit underwriting procedures that are at least as stringent as, comparable transactions with persons that are non-insiders and not employees of the bank. [6] For banks, this should suffice to avoid any financial conflict of interest. Further, bank regulators often *encourage* directors to "do business with their banks" in order to better understand them. This prohibition would rule out something as simple as directors having an overdraft line of credit to ensure their accounts are not overdrawn with their own institution. This practice should be encouraged. Further, particularly in the case of regulated CDFIs, substantial regulatory controls are in place to prevent the abuse of financial interests, so that they do not evolve into conflicts of interest.

For example, many CDFI banks invite representative leaders from local social service organizations to serve on their advisory boards. As CDFI banks are often the only bank serving their communities, the social service organization is likely to be a customer of the bank. Perhaps there is a line of credit, or perhaps the bank helped finance the rehabilitation of the organization's headquarters. Perhaps the financial relationship is pre-existing, in which the CDFI may be required to replace the organization on the advisory board. Perhaps though, the organization does not have a pre-existing relationship, but needs a loan. The organization will be reluctant to volunteer its staff's time if it means being cut off from financing. If the CDFI is the only appropriate local lender, *it does not make sense for the CDFI to be forced to remove a board member when asked to make a qualifying loan.*

CDFIs more generally are also encouraged to invite individuals who are themselves representative of LMI or OTP communities. *It is antithetical to the mission of CDFIs for the CDFI Fund to prohibit representatives from CDFI Target Markets from receiving compensation for their work, or from having access to the products provided by the local CDFI.* Many CDFI bank board members receive a stipend for their service. This is correct, as there is a significant responsibility attached to serving. A stipend helps compensate board members for the risk they undertake as well as time away from their respective professions. It is often difficult to attract qualified directors to serve. If CDFI banks cannot compensate them for their time, it will make this even more challenging. The proposal both assumes first, that every individual involved in helping a CDFI achieve its mission in LMI communities should be a *volunteer*, and 2) that those volunteers should not have access to the tools provided by the local CDFI. Neither of these assumptions are just, neither is consistent with the CDFI mission, and neither is logically tied to an outcome of preventing conflicts of interest. If the policy is not removed immediately, the CDFI Fund can make an improvement by clarifying what constitutes "expenses incurred." For

[6] https://www.federalreserve.gov/supervisionreg/legalinterpretations/reg-o-frequently-asked-questions.htm

example, if an attorney serves on a CDFI bank board, perhaps the bank could calculate their hourly rate and reimburse them for their time.

This policy also fundamentally undermines our colleagues at CDFI credit unions. The rule would effectively prohibit virtually all members of credit union governing boards from being recognized as accountable. Credit union board members must themselves be members of the credit union and can be expected to use the credit union's financial products on equal footing as all other members. The potential for conflicts of interest is addressed by specific provisions in the Federal Credit Union Act and in each credit union's Bylaws that mandate the "non-preferential treatment" of credit union officials and members of their immediate family. Predictably, and tragically, this provision is particularly unfair to board members who have low incomes or who are members of targeted populations who may rely on their credit unions to meet their transaction account and borrowing needs. Barring these members from being considered accountable to their communities because they use their credit unions' services in the same way as the broader credit union membership they represent decreases, rather than increases the accountability of those boards.

The Financial Interest Policy must be narrowed to encourage CDFIs to tightly police potential conflicts of interest, but continue to allow and encourage constructive financial interests between CDFIs and their boards. CDFIs of all types work hard to build relationships/partnerships in their communities, and hope that the people they invite to help meet the accountability requirements *will become customers* and engage with them. This is, in itself, *an accountability enhancer*, and not a detraction.

<u>*Board Member Accountability – Low-Income Targeted Population*</u>

Question AC 24 of the application asks if the CDFI has "verified" board member income for board members listed as providing accountability to a "Low-Income Targeted Population as a Low-Income person." *It is intrusive to require volunteer board members to provide tax returns or other documentation to verify low-income status. We strongly recommend that the Fund allow self-certification of income.*

7. **Development Services**

CDBA and NBA join colleagues across the CDFI industry in strongly encouraging a reversal of proposed changes to Development Services. These changes were first proposed in 2020, and have returned unchanged in 2022. Despite CDFI Fund assertions to the contrary, 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.

We recommend that all Development Services — especially those that have proven to be critical to low- and moderate-income communities, that do not fit the CDFI Fund's proposed, strict parameters, and those that are delivered in conjunction with *financial services* — 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 financial product *or financial 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 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"* (emphasis added). We believe this change is in direct conflict with how CDFIs operate and with Congressional intent as articulated in authorizing hearings in 1993-1994. CDFIs success in meeting community needs stems from their ability to be nimble and not just operate with a list of "canned products". It will be a terrible shame to force CDFI services to become just another a commodity that could be offered by a conventional bank. CDFIs should be allowed to customize their services to meet customers' needs.

Further, *the CDFI Fund has taken the extraordinary step of "clarifying" that "Development Services offered in connection with Financial Services cannot be considered in a CDFI Certification Application." This step alone removes great swathes of valuable development services offered by depositories from CDFI consideration*, and we strongly urge the CDFI Fund to reverse this.

One example of valuable development services offered in connection with Financial Services, are bank activities offered in conjunction with Individual Development Accounts (IDAs). IDAs are special bank accounts that help low-income Temporary Assistance for Needy Families (TANF) qualifying qualified individuals save for education, the purchase of a first home, or to start a business. IDA are provided in partnership with of a sponsor nonprofit that often supplements the funds in the account when a client meets certain goals.[7] Often, these accounts require bank staff to devote extra resources to help clients understand and manage the account. Another example is service provided by banks in conjunction with Volunteer Income Tax Assistance (VITA) centers. These providers often 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.[8] Many individuals who use these services are among our nation's underbanked, and CDFI banks provide technical assistance resources for those individuals to open affordable checking or savings accounts. This assistance helps them receive their refund electronically and avoid expensive check cashers. With the new prohibition, these and other well targeted, valuable, and popular development services will cease to qualify. We can see no good reason to disqualify these for the purposes of CDFI certification.

[7] https://www.ssa.gov/ssi/spotlights/spot-individual-development.htm
[8] https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers

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 work by Inclusiv and the Financial Health Network[9] — 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 prohibits CDFIs from receiving credit for delivering valuable and widely available financial literacy curricula, including, for example, 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. We strongly urged the CDFI Fund to clarify that this language does not to prevent CDFIs from receiving credit for delivering content created by another entity.
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." We

[9] 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

strongly urge 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? We strongly urge 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. We strongly urge the CDFI Fund not to exclude any services that allow CDFIs to safely serve their communities at a distance, *especially through online delivery,* 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. *We strongly urge 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. *We strongly urge 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. *We strongly urge 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 provisions will harm the customers living in the LMI communities that CDFIs are dedicated to serve.*

8. **Native American CDFIs**

We strongly endorse comments submitted on December 5 by the Native CDFI Network, particularly where those comments apply specifically to the needs of Native communities and the CDFIs that serve them. Native CDFIs are vital institutions that are central to ensuring the future wellbeing of Native communities across the country. Native CDFIs must be provided great flexibility to remain responsive to the needs of their Target markets. We are dismayed that NCN's analysis concludes that "*the proposed CDFI Certification Application and policies contain several troubling provisions that will make it exceedingly difficult for currently certified Native CDFIs to recertify and 'emerging' Native CDFIs to achieve certification in the first place.*"

We believe the CDFI Application process must encourage institutions to serve all low income communities, and the prospect of a declining number of CDFIs serving Native communities[10] is a sign that the system is not working.

Further, many of NCN's concerns apply equally across the range of small, emerging, rural, and OTP-serving CDFIs across the country. We urge the CDFI Fund to carefully consider the analysis conducted by NCN and adopt their recommendations.

CONCLUSION

CDBA and NBA member banks fully appreciate the 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,* Brian Blake, CDBA Chief Policy Director at (646) 283-7929 or *blakeb@pcgloanfund.org,* or Nicole Elam, NBA President & CEO at (202) 590-6880 or *nelam@nationalbankers.org.*

Thank you for considering our recommendations.

Sincerely,

Jeannine Jacokes
Chief Executive Officer
Community Development Bankers Association

Nicole Elam
President & CEO
National Bankers Association

[10] Per NCN, "Currently, a total of 64 Treasury-certified Native CDFIs (down from its recent peak of 72 certified Native CDFIs) . . . can be found in 27 states across the country." Letter to the CDFI Fund, dated December 5, 2022.