May 4, 2017

The Honorable Steven Mnuchin
Secretary
US Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20510

Dear Secretary Mnuchin:

On behalf of the Community Development Bankers Association (CDBA) and National Bankers Association (NBA), we wish to thank you for the opportunity to meet on April 21, 2017 to discuss the work of our banks and Executive Order 13772. As a follow up to the conversation, below are issues and recommendations that CDBA and NBA would like to advance for further consideration.

Background: CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 137 banks and 87 bank holding companies with the Treasury's CDFI designation – which means at least 60% of total lending, services and other activities are targeted to LMI communities. CDFI banks are distinct from traditional banks because they principally work in impoverished urban neighborhoods and distressed rural communities.

NBA is the national trade association of banks and thrifts that are minority- and women-owned. Currently, there are 157 Minority Depository Institutions designated by the FDIC – of which 37 are also CDFI certified. MDIs are distinct from traditional banks because they are owned and/or controlled by minority leadership whom are committed to ensuring traditionally underserved minority populations have access to credit and financial services.

Challenge:

The members of CDBA and NBA sincerely appreciate the opportunity to comment of the extent to which the current system of regulation aligns with the economic growth and needs of consumers and businesses, as well as other directives of Executive Order 13772.

CDFI and MDI banks are more committed than ever to serving LMIs and promoting financial inclusion among the unbanked and under-banked. We are concerned that many well-intended Dodd-Frank regulatory changes are having unintended consequence of significantly reducing credit availability and access to financial services in LMI communities. We fully appreciate the intent of Dodd-Frank regulators to mitigate risk, ensure the soundness the financial system, and promote consumer protection. The "secret sauce" of CDFI and MDI banks, however, has always been our ability to be flexible and craft sustainable products and services to meet the needs of our unique customers. The effect of some recent regulatory changes are to reduce flexibility and increase cost; thus, making it harder for CDFI and MDI banks to serve LMI communities.

As a nation, we have already seen what happens when low-income markets and vulnerable populations cannot access the banking system. Non-regulated predatory lenders and service providers will fill the gaps. As the last decade has demonstrated, the consequences are dire not only for LMI families and communities, but for the economy as a whole.

Regulatory Streamlining for Small Banks:

CDFI and MDI banks are among the smallest regulated banks in the United States. Thus, the burden of regulation is heavy relative to their capacity and scale. Average asset size of a CDFI bank is $341 million. The largest is $2.7 billion and the smallest is $27 million. While a small handful of MDIs have total assets of greater than $10 billion, 85% are less than $1 billion and 92% are less than $3 billion.

CDBA and NBA strongly believe regulatory streamlining is needed for small banks under $10 billion, particularly those serving distressed and underserved markets. CDBA and NBA do not support a wholesale rollback of all pre-Great Recession laws and regulations. Our banks work with customers that are often financially fragile and in communities frequently targeted by predatory lenders. We have seen how predatory practices can devastate a community and their residents.

We believe the regulatory system should: (1) explicitly recognize the dissimilarities in capacity and systemic risk posed by different institutions based on size and scope of activities; (2) recognize that flexibility is important in serving distressed and underserved communities, as well as moving un- and under-banked populations into the economic mainstream; and (3) maintain effective consumer protection.

Maintain Support for the CDFI Fund:

The markets CDFI and MDI banks serve are among the most challenging in the nation. While regulatory streamlining will help create a better operating environment for CDFI and MDI banks to meet the needs of unique customers, regulatory relief alone is NOT enough. We need subsidy to do many of the things we do. The US Treasury Department's Community Development Financial Institutions (CDFI) Fund and its programs are amongst the most powerful tools available to our banks.

We strongly oppose the Administration's FY 2018 budget proposal to eliminate support for the CDFI Fund's CDFI Financial Assistance and Bank Enterprise Award grant programs. These programs are critically important tools for CDFI and MDI banks in meeting the unique challenges in serving low-income communities. The programs of the CDFI Fund have a proven, documented record of accomplishment in creating impact. They are invaluable in helping banks find ways to serve credit markets and communities that otherwise will not be served. It is one of the Federal Government's best market-based strategies for leveraging and channeling needed resources to our most challenged communities. We strongly encourage the Administration to reconsider its FY 2018 budget proposal's stance on the CDFI Fund's programs.

CAPITAL FORMATION: HOW BASEL III NEGATIVELY IMPACTS CREDIT IN LMI COMMUNITIES

CDBA and NBA are very concerned that the Basel III regulators, as applied to small banks, will create significant constraints on access to credit in LMI communities. Basel III was originally designed to apply only to large, internationally active banks and should not be applied to small banks. Basel III significantly revises and increases the regulatory risk-based and leverage capital requirements for all banks. Significant refinements are needed to ensure that the Basel III rules do not result in an unnecessary reduction in credit and economic activity among people and places with historically tenuous access to the mainstream financial services. CDBA and NBA supports the following amendments.

- NON-SIFI EXEMPTION: CDBA and NBA support a full exemption from Basel III for all non-systemically important financial institutions (non-SIFIs). Alternatively, if a full exemption is not possible, we propose several amendments outlined below. Ideally, we believe these amendments should be applied to all small banks (under $10 billion) as it will help bolster the economic health of the nation. If it is not possible to apply the amendments to all non-SIFIs, we urge you, at a minimum, to consider them for CDFI and MDI banks given the significantly more acute economic challenges faced by their LMI communities.

- SIMPLIFIED CAPITAL RATIO: As an alternative to the current four Basel III ratios (Leverage Ratio, Common Equity, Tier/Risk Weighted Assets, Total Risk Based Capital Ratio), we recommend a single Total Risk Based Capital Ratio (Total Risk Weighted Assets/Total Capital) for banks under $10 billion. The numerator should be comprised of Total Risk Weighted Assets using the Basel II risk weights. The denominator should be comprised of Tier I and Tier II capital.

    - FULL CAPITAL RECOGNITION OF ALLOWANCE FOR CREDIT LOSSES: Adequate capital is important at every bank. CDBA and NBA recommends that the allowance for credit losses be included in Tier I capital up to 1 .25 percent of risk weighted assets with the remaining amount reported in Tier 2 capital. This change would reverse the punitive treatment of the allowance under Basel III. Currently, there is no capital treatment for loan loss reserves that exceed 1.25 percent of risk-weighted assets. The allowance should be captured in the regulatory capital framework since it is the first line of defense in protecting against future credit losses.

    - AMENDED RISK WEIGHTING: CDBA and NBA recommends providing 100 percent risk weighting for acquisition, development, and construction loans to promote economic development in LMI communities. Under Basel III, many of such loans are classified as High Volatility Commercial Real Estate (HVCRE) loans and risk weighted at 150%. The current risk weighting for Commercial Real Estate (CRE) does not adequately distinguish among different types of activities that have different risk profiles. For example, affordable rental housing loans are risk weighted the same as speculative commercial real estate. Yet, during the Great Recession, affordable rental housing outperformed every category of commercial real estate with minimal losses. In LMI communities, CDFIs and MDIs often use a range of Federal, state and local subsidy programs that mitigate CRE lending risks, including the Low Income Housing Tax Credit, New Market Tax Credit, and the Historic Preservation Tax Credit. To provide a 100% risk weighting for acquisition, development, and construction loans in LMI communities would treat these loans the same as other commercial real estate loans and would be consistent with Basel III.

- CAPITAL CONSERVATION BUFFER: As noted, CDBA and NBA recommends exemption from the capital conservation buffer for non-SIFIs. Alternatively, if a full exemption is not possible, CDBA proposes several amendments outlined below. Ideally, we believe these amendments should be applied to all small banks (under $10 billion). The new capital conservation buffer provision imposes dividend restrictions that have a chilling effect on potential investors for all small banks. This circumstance is particularly acute in the case of dividend restrictions for Subchapter S banks whose investors rely on dividends to pay their pro-rata share of the bank's income tax (this same type of limitation is not applicable to C Corp banks). Exempting all non-SIFIs from the capital conservation buffer would make it easier to raise capital and maintain capital levels proportionate with their risk profile.

  In the case of a CDFI and MDI bank, every dollar of capital is precious. Every dollar is earned and retained -- or raised -- to meet both the financial return and social impact expectations of an investor. The new capital buffer provisions raise the aggregate quantity of capital regardless of the bank's risk profile; it inherently lowers and/or lengthens the investors' time horizon and specifically limits the type of capital to common equity that can be raised. While CDFI and MDI bank investors are typically long-term patient investors, the new buffers create challenges no matter what type of capital is considered.

- AMEND SMALL BANK HOLDING COMPANY POLICY: CDBA and NBA recommend amending the Federal Reserve's Small Bank Holding Company Policy to exempt bank holding companies under $10 billion. Currently, the policy covers only holding companies with less than $1 billion in consolidated assets. This policy allows covered holding companies to operate with higher levels of debt than would otherwise be permitted. In addition, holding companies that are subject to the policy are exempt from the Federal Reserve Board's consolidated risk-based and leverage capital rules. In this case, the Federal Reserve assesses compliance with capital requirements for holding companies subject to the policy at the depository institution level when regulatory or statutory provisions require that an organization be well capitalized.

- FDICIA EXEMPTION: CDBA and NBA recommend amending FDICIA to exempt bank holding companies under $10 billion from the Financial Accounting Standards Board (FASB) definition of a Public Business Entity. Currently, only banks of $1 billion or less are exempt. This requirement adds significant costs to small banks' operating expenses to obtain a full financial audit annually and the people, processes, systems and documentation for proper internal controls consistent with a much larger and complex enterprise. The internal controls attestation adds unnecessary complexity to routine bank processes already examined by our prudential regulator.

- RECIPROCAL DEPOSITS: CDBA and NBA strongly recommend that reciprocal deposits be exempt from the FDIC's definition of brokered deposits. CDFI and MDI banks operate in communities with modest discretionary income. We often find that income is insufficient to raise deposits needed to fund loans. Therefore, as an integral part of our strategy, we raise deposits from civic-minded corporations, nonprofit institutions, and other local stakeholders. Our common experience demonstrates that investors are willing to invest much larger deposits in CDFI and MDI banks if they are assured those deposits are insured. Many institutional depositors often have requirements that deposits be fully insured. Reciprocal deposits provide that assurance. Without access to large institutional deposits, many of our loans could not be made. In fact, CDFI banks are four times more likely to use reciprocal deposits than their peers. MDI banks are three times more likely to use reciprocal deposits than their peers. The problem is that reciprocal deposits are defined by the FDIC as brokered deposits despite the fact that they are relationship-based and as stable as core deposits. Studies have shown that reciprocal deposits do not present any of the regulatory challenges that brokered deposits do.

- MISSION CAPITAL: CDFI and MDI banks have a diverse set of capital structures and types that have evolved to meet the changing financial challenges of our markets. CDBA and NBA recommends that the regulatory agencies amend its capital rules (as noted above) to accommodate certain types of capital that are uniquely available to CDFI and MDI banks. Our members often have access to philanthropic or alternative mission-oriented capital that may not fit customary market-rate or regulatory definitions. For example, a growing number of foundations offer Program Related Investments (long term, deeply subordinated debt at concessionary rates). First, we recommend regulators amend the subordinated debt rules to give Tier 1 consideration to resources provided it at subordinated or concessionary rates that are borrowed by the holding company and injected into the CDFI or MDI bank as capital. Second, we ask that you work with the CDFI and MDI banks to design new types of preferred stock ownership that can be given Tier 1 consideration that takes into account the social inclination of our shareholders.

FINANCIAL INCLUSION & IMPACT OF REGULATION

CDFI and MDI banks are on the front line in promoting financial inclusion and viability of small businesses and consumers. We have a mission and proven record of serving the most challenging communities in America. Some policies created to protect the safety and soundness of the banking system post-crisis may have unintended consequences of undermining financial inclusion and access to credit.

No single Federal agency has authority over Dodd Frank provisions that may create challenges to financial inclusion. Jurisdiction lies across multiple agencies. Thoughtful consideration needs to be given to how each rule and how the cumulative impact of multiple rules impair the ability of CDFI and MDI banks to serve these markets – as well as all small banks. In some cases, new Dodd-Frank regulations are forcing CDFI and MDI banks (and other community banks) to suspend, modify or even discontinue necessary services. Yet, the demand and need does not end. Non-regulated and possibly predatory lenders fill the void. Vulnerable residents of our communities are impacted.

- INTERAGENCY FINANCIAL INCLUSION COMMITTEE: CDBA and NBA recommend that the US Treasury take a leadership role among its fellow Federal agency peers by initiating the creation of an Interagency Committee on Financial Inclusion and Community Investment. Such a Committee should: (1) examine the role of increasing regulation on the ultimate service to LMI communities and the un- and under-banked; and (2) continuously review and streamline any rules or policies that undermine financial inclusion or investment in LMI communities.

  An Interagency Committee on Financial Inclusion and Community Investment should include US Treasury, all of the banking regulatory agencies, the Consumer Financial Protection Bureau (CFPB), and the Treasury Department's CDFI Fund, as well as include representation from regulatory, supervisory, and consumer and community affairs divisions of the banking agencies to best inform policy making. We believe Federal policy makers need to balance the need for safety and soundness and consumer protection with the need to ensure access to affordable credit and financial services for LMI communities.

  We urge Federal policy makers to recognize the important role of CDFIs and MDIs in serving LMI communities and the un- and under-banked. To serve these vulnerable markets, CDFIs and MDIs need flexibility to innovate. There is a long record of accomplishment among CDFIs safely and soundly piloting new products and services and proving viability of offerings later adopted by bigger banks. Federal policy makers have an opportunity to collaborate with CDFIs and MDIs to promote financial inclusion, and flexibility is key. In some cases, this review may result in giving CDFIs and MDIs greater compliance flexibility or exemptions.

- SMALL DOLLAR LOANS: CDBA and NBA recommend that the CFPB's small dollar loan rule be reviewed by the Interagency Committee on Financial Inclusion and Community Investment (proposed above) to ensure that it does not create unnecessary barriers for responsible regulated institutions to serve customers. Recent news accounts and studies have reported that as high as 62% of Americans do not have $1,000 in savings, 21% do not have a savings account and do not have $500 for an emergency. Of those with savings, 57% reported using all or some of their savings during the recession. What do these families do in an emergency or simply repairing a car to get to work? To fill this gap, many CDFI and MDIs banks have created small dollar loan products.

  On June 2, the CFPB released a new proposed rule on small dollar loans. The CDBA submitted a detailed comment letter on the rule (Attachment A). A final rule is pending. Generally, CDFI and MDI banks support the proposed rule's provisions for products with maturities of 45 days or less. With respect to long-term installment loans, CDBA and NBA support the CFPB's rules with the caveat of creating several tailored exemptions that would preserve service to bank customers with the smallest loans (aka accommodation loans). Our experience today finds that these products, while not profitable, are important to provide lest our communities and residents are caught in predatory products. We strongly doubt regulated financial institutions will be interested in offering the short-term 45-day products that are the focus of the rule. Yet, many banks have experimented with an array of longer-term products that may be caught up in the rule. We are concerned that the compliance costs of the proposed rule not become so onerous that responsible regulated entities cannot offer them – leaving consumers with an emergency need at the mercy of payday or other predatory lenders.

- MORTGAGE LENDING: Home ownership is one of the most effective ways to help LMI families to build assets and economic security.

  - APPRAISALS: In low-income communities, CDBA and NBA recommends: (1) waiving the appraisal requirement; or (2) going back to the prior practice whereby regulators allowed banks to use internal assessments of value based on market knowledge. In rural communities, mortgages under $100,000 should be exempt, as well as mortgages on manufactured housing. In urban places, a scale should be developed to exempt modest value mortgages that takes into consideration cost of living and MSA housing prices.

    Changes to Regulation Z now require appraisals on higher priced mortgage loans over $25,500, which can create barriers to home ownership among low-income families. Low housing values, in particularly in rural markets, can result in market aberrations that do not fit the current rules. For example, in some rural communities, many home sales range from $25,000 to $50,000. Previously banks could use internal reviews in lieu of a formal appraisal – a practice that saves a borrower money. Accurate and timely appraisals are often hard to secure in rural markets due to large geographic areas, very low sales volumes, and availability of comparables. Often these appraisals cannot meet regulatory standards; thus, the loans cannot qualify as conventional loans to be sold into the secondary market. The cost of obtaining an appraisal is traditionally paid for by the borrower; thus, it increases the cost of home ownership for low income families.

- HIGH PRICED MORTGAGE LOANS (HPML): We recommend that the appraisal requirement be waived for HPML loans held in the portfolios of banks with less than $10 billion in assets. HPML are loans priced at or above Average Prime Offer Rates (APORs) plus 1.5% for 1st liens and APOR plus 3.5% for 2nd liens. The APOR as of May 1, 2017 for a 15 year fixed rate mortgage is 3.33% plus 1.5% -- or 4.83% total. While higher than APOR rates, the current standard for HPMLs is quite low by historic mortgage rate. As studies on socioeconomic factors have shown, lower income households are more likely to have lower credits scores, thus, more likely to pay more to borrow. Thus, low-income borrowers are more likely to have mortgage loans that meet the HPML definition. HPMLs are now required to have a full appraisal. Additional appraisal fees further increase the costs to borrowers – which are more difficult for lower income customers to absorb. Since HPMLs are held in the portfolios of banks, they are not sold to the secondary market; thus, the bank has a motivation to be prudent in its property valuations.

- TILA-RESPA INTEGRATED DISCLOSURE (TRID): At the heart of the new TILA-RESPA Integrated Disclosure (TRID) rules is an effort by the CFPB to provide consumers with a clear and accurate understanding of the costs associated with purchasing or refinancing a home. CDBA and NBA support efforts to improve transparency and consumer knowledge. Although TILA-RESPA disclosures move in the right direction of making sure consumers are knowledgeable about their mortgage loans, the sheer volume of new disclosures required under TRID is overwhelming to a typical borrower. Most consumers simply sign the documents without understanding them – which works against the purposes of "know before you owe."

  Borrowers are bearing a heavier burden caused by regulatory complexity as bank compliance costs rise, closing attorneys, appraisers, tax servicers, insurance carriers, and surveyors charge higher fees. TRID ultimately increases the cost of becoming a homeowner. This cost is particularly burdensome for lower income households -- and is a barrier for some to home ownership. Numerous banks have exited the mortgage market while others have increased their minimum loan size in response to rising compliance costs and risks. Low- and moderate-income people, the consumers CFPB is trying to help, are the most negatively impacted.

DENIALS: We recommend that the TILA rules afford banks under $10 billion with greater flexibility to work with LMI customers and enable them to become successful borrowers. TILA rules incentivize quick declines of applicants not meeting all requirements – effectively preventing intervention by counselors that can help resolve problems (e.g. credit scores). Many CDFI and MDI banks are actively engaged in helping customers buy their first home. The new rules require lenders to approve or reject a borrower within 30 days of a recipient's completed application.

Under the current rules, the banks must provide a fee estimate, even if the exact settlement service fees are not known or if the fee was verbally discussed with the applicant within the three-business-day disclosure period. Because the bank does not need to provide an estimate of the fees if the credit application is denied within three business days, borrowers with more complicated financial situations are more likely to be declined to avoid the extra costs of preparing formal estimates and disclosures.

Being rejected for a loan is a demoralizing experience for a customer – particularly those of modest means. CDFI and MDI banks need more flexibility to work with customers and ready them for borrowing so that they aren't rejected. Some CDFI and MDI banks work with government or foundation programs that provide subsidies to make a loan to an LMI household bankable. The requirements of TILA are sufficiently inflexible that it has reduced banks' ability to tap such resources on behalf of customers.

CLOSING DISCLOSURE WAITING PERIOD: We recommended a streamlined process for closing disclosures. TRID has increased the amount of time it takes to close a loan. While this may be an inconvenience for most households, among first-time buyers or low-income households just developing the financial literacy skills to become a homeowner, the barriers and delays are significantly greater. At least seven days prior to loan closing and within three days of an initial application, the lender must provide a borrower with estimated fees. TRID now requires an additional Closing Disclosure be provided three days prior to closing. Certain modifications to an existing application (even at the request of the borrower) may result in further delay (potentially even restarting a new seven-day waiting period) of the entire closing process.

LOAN ESTIMATES: We recommend making the TRID Loan Estimate requirements more flexible. Under TRID, as part of the closing process, a lender must issue a Loan Estimate which includes the lenders' fees, as well as fees charged by other parties (e.g. attorney, title company fees, title insurance, property taxes, transfer taxes, pest inspection, etc.). Once an estimate is issued, the borrower must wait at least seven days before a loan can close. If certain fees on the Closing Disclosure have increased above amounts in the Loan Estimate, the lender may have to pay specific reimbursements to the borrower depending on whether the category has a zero tolerance or a ten percent tolerance. Alternatively, the entire closing process must restart again with a new seven-day waiting period. In the case of third party service providers, the lender often does not know how much will be charged on a specific transaction until after the Loan Estimate has been produced. This circumstance creates great frustration for borrowers and lenders alike. We recommend greater flexibility in estimating closing fees. Specifically:

- Increase tolerance levels on lender-required services for which consumer cannot shop for a provider from 0% to 15% because the lender cannot always guarantee what that service provider may charge.
- Increase tolerance levels on lender-required services for which consumer may shop for a provider from 10% to 20%.
- Increase the number of days required to produce and deliver the Loan Estimate to 5 business days.
- Remove transfer taxes as a 0% tolerance level and place it in the category with annual real estate taxes.
- Decrease the number of days to provide the Closing Disclosure from 3 days before closing to 2 days before closing.

- PREPAID DEBIT CARDS: CDBA recommends that CDFI and MDI banks be exempt from 12 CFR part 1040 as proposed by the CFPB. The 2013 FDIC National Survey of Unbanked and Underbanked Households reported that 22.3% of all unbanked households used prepaid debit cards as compared to 5.3% of fully banked households. For CDFI and MDI banks, offering prepaid debit cards is a logical step given the demographics of their core customer base and a compliment to other services. Prepaid debits cards provided by regulated financial institutions carry stronger consumer protections than those offered by many unregulated providers. Pursuant to section 1028(b) of the Dodd-Frank Act, the CFPB is proposing to establish 12 CFR part 1040, which is creating new barriers to offering these types of products because of its mandatory arbitration requirements. The rule prescribes that arbitration be precluded as an option for consumers to solve issues of complaint against a product provided by the financial institution. CFPB's own study shows that arbitration solutions provide a higher dollar resolution to consumer's issues over litigation. Due to the class action suit "permission" implicitly granted by this rule, the Plaintiffs bar is the entity, which will become enriched by this action, and not the consumer. This high cost of doing business may preclude many CDFI and MDI banks from providing this much-needed service to the un- and under-banked. These risks significantly increase costs to offer prepaid debit cards. If CDFI and MDI banks or other regulated institutions stop offering prepaid debit cards because the risks and costs are too high, unbanked and underbanked households suffer the consequences.

CROSS CUTTING AND OTHER ISSUES

- EXPANDED REPORTING REQUIREMENTS: CDBA and NBA recommend significantly streamlining the proposed expanded HMDA reporting requirements and Section 1017 Small Business Lending Disclosure requirements. Alternatively, we propose that implementation of these rules be delayed until they can be reviewed by the proposed Interagency Committee on Financial Inclusion and Community Investment (discussed above). We are concerned that the voluminous reporting requirements, the cost to create and implement the systems, as well as the heightened risk of compliance violations could result in many lenders curtailing or eliminating these product lines – resulting in a reduction in overall credit availability. The burden will be felt most heavily by small banks, who provide 43% of all small business loans nationwide (Q4 2016 FDIC). We are concerned that low-income communities, as well as minority borrowers, may be disproportionately negatively impacted.

  CDFI and MDI banks stanchly support fair lending and nondiscrimination in all of their activities. Our members are deliberate and proactive in serving low-income people and communities and promoting financial inclusion. Despite our strong commitment to promoting access to capital among underserved groups, it is overwhelming to contemplate implementation of the proposed expanded HMDA and new Small Business Lending Disclosure requirements. Currently HMDA requires reporting of 21 data points for each home mortgage loan. This requirement will expand to more 48 data points on January 1, 2018. While the CFPB has not issued a proposed rule, the new small business lending reporting requirements could be similarly challenging.

- BANK SECRECY ACT (BSA): To preserve availability of basic financial services in LMI communities, CDBA recommends that regulators develop a streamlined version of BSA for small banks under $10 billion. Some examples of streamlining: (1) significantly raising the MSB registration threshold above the current $1,000 for cashing checks for any person on any day in one or more transactions: (2) waiving the requirement that small banks monitor MSB registration and MSB BSA compliance for small businesses; (3) clarify that banks are not required to obtain contracts or otherwise monitor the activities of a retail customers vendors (e.g. an ATM vendor that leases space from a convenience store); and (4) reduce the paperwork required for performing due diligence for Phase II Exempt Customers (e.g. confirming a business is in Good Standing with the Secretary of State).

  Residents of LMI communities -- particularly those with large immigrant populations -- are more dependent on Money Service Businesses (MSBs) than middle and high-income communities. Most MSBs are not predatory lenders. In rural communities or urban neighborhoods, many are simply Mom and Pop retail stores that provide customers with the convenience of cashing a check after regular bank business hours, paying bills, or wiring money to their families back home. The very broad definition of an MSB includes grocery stores, convenience stores, or other retail. These small businesses are often CDFI and MDI bank customers.

BSA is an important part of our nation's security. Yet, BSA places a high burden and cost on banks – particularly small banks and small business -- that create barriers for retail customers. If CDFI and MDI banks stop serving these businesses, the businesses will stop providing the service, which, in turn, hurts the low-income consumers. Regulatory agencies have significantly enhanced BSA scrutiny. BSA compliance standards are the same for small banks as the largest bank; thus, making it difficult for the smallest banks to maintain service. As a result, more and more banks will not accept or open accounts with MSBs. If this occurs, the business will no longer offer the service. Consumers will be forced to go to expensive check cashing businesses.

- CDFI AND MDI BANK TAX ISSUES:

    - TAX EXEMPTION ON CDFI FUND GRANTS: CDBA and NBA recommend that CDFI Fund grant and other resources received by CDFI and MDI banks be exempt from taxation. This money is best used to invest in low income communities. CDFI banks and MDI banks are active participants in the grant programs of the CDFI Fund. The purpose of these programs is to provide resources that will be directed to low income communities. Unlike unregulated nonprofit CDFI loan funds, CDFI and MDI banks pay taxes of approximately 40% of the value of grants received.

    - TAX CREDIT FOR INVESTMENT: CDBA AND NBA recommends creating a tax credit to promote capital formation among CDFI and MDI banks. The US Treasury operates the highly successful and impactful New Markets Tax Credit (NMTC) Program. We propose that a similar incentive be create to promote economic growth in low-income communities.

      Capital is critical for every financial institution. CDFI and MDI banks need capital to increase lending activity and other financial services, take risk, and innovate. Small banks, particularly CDFI and MDI banks, struggle to raise needed equity from conventional capital markets due challenges and misperceptions related to risk, return and liquidity. Yet, a 2015 study a research team at the Darden Business School at the University of Virginia dispelled some misperceptions regarding CDFI and MDI bank risk. The study found that CDFI banks posed no higher risk of financial failure than mainstream financial institutions. Additionally, while serving predominately low-income markets, CDFI banks perform similarly to mainstream financial institutions. As most CDFI and MDI banks are small and privately held due to a desire to maintain their mission focus, they cannot easily access mainstream capital markets to raise equity. The Administration could significantly enhance CDFI and MDI bank lending by creating tax incentives for private investors.

COMMUNITY REINVESTMENT

CDFI and MDI banks strongly support the purposes and objectives of the Community Reinvestment Act (CRA). Enacted 40 years ago, the last significant CRA regulatory overhaul occurred 20+ years ago, and has lost some effectiveness for LMI communities. The financial services industry has radically changed in the last two decades, but CRA has not. We believe that the CRA can be a powerful tool to: (1) promote investment in LMI communities; and (2) support and expand the capacity of CDFI and MDI banks to serve underserved communities. With a few small changes highlighted below, it could help CDFI and MDI banks expand their capacity, reach and impact. In addition, Attachment B is a more set of detailed recommendations submitted by CDBA to the Federal Reserve in March 2017 on these issues.

- ENHANCED POLICY COORDINATION: CDBA and NBA strongly recommend greater policy coordination between the bank regulatory agencies' implementation of CRA and the Treasury's new annual CDFI certification requirements. In 2016, the CDFI Fund launched a new annual certification report that will require geocoding of all loans and services within a bank's entire footprint. Bank regulatory agencies have a very different set of CRA reporting and compliance requirements that measure lending and service in a more geographically limited Assessment Area. All of the Federal agencies are essentially interested in the same outcomes – improving the economic well-being of LMI communities. Yet, the lack of policy coordination results in multiple standards and voluminous double reporting that creates unnecessary administrative burden and siphons resources away from CDFI and MDI banks serving underserved communities.

  Given the important public policy objectives that CDFIs fulfill, we recommend that the bank regulatory agencies and Treasury Department jointly design an alternative special CRA evaluation methodology option for CDFI banks that will utilize the same data as used for CDFI certification. The regulatory agencies have previously recognized distinctions between different types of banks by creating alternative CRA evaluation methodologies (i.e. small bank, wholesale bank, strategic plan). Today, bank examiners do not distinguish or recognize the CDFI certification when it considers a CDFI bank's performance under CRA – despite the fact that CDFI banks dedicate a greater portion of their overall activities to the lowest income communities. We recommend greater coordination and policy consistency between Treasury and the banking regulatory agencies for CRA compliance and CDFI certification requirements with the goal of streamlining data collection and simplifying reporting for CDFI banks.

  We believe more information sharing among Federal policy makers could reduce reporting overlap. For example, in early 2016, Treasury and the National Credit Union Administration (NCUA) announced an initiative to share data collected by the NCUA that could also be used for CDFI certification. Banking regulators and Treasury should initiate similar information-sharing efforts to reduce the combined burden of compliance for CRA and CDFI certification.

- TREAT CDFI BANKS EQUAL: CDBA and NBA strongly recommend that investments in CDFI banks receive the same treatment under CRA as those investments made in Minority Depository Institutions (MDIs) and Low Income Credit Unions. CDFIs were first formally recognized by Federal policy makers 20 years ago and have demonstrated strong performance in serving low-income markets. Yet, CDFIs are not explicitly recognized under CRA in the same manner as MDIs and Low Income Credit Unions. Currently any bank can get CRA credit for providing financial or other support to an MDI or Low Income Credit Union regardless of whether or not the entity is located within a bank's designated Assessment Area. By contrast, a bank providing similar support can only be assured of getting CRA consideration if the CDFI is located in or substantially serving a bank's designated CRA assessment area.

  CDFI banks should be afforded the same consideration as MDIs or Low Income Credit Unions because the CDFI standard targeting service to LMI communities is far more stringent. For example, there are 164 MDIs -- of which only 37 meet the CDFI standard of targeting at least 60% of their lending into low income communities. In recent years, the National Credit Union Administration (NCUA) has significantly revised and relaxed the requirements for qualification as a Low Income Credit Union. Twenty years ago, less than 200 credit unions met this standard. Over the past few years, NCUA has lowered the requirements and now fully one-third (2,000+) of all credit unions qualify. By contrast, only 271 credit unions (4.5% of the sector) meet the more stringent CDFI requirements.

- UPDATING CRA: CDBA and NBA recommend that the bank regulatory agencies embark on an overhaul of the current CRA regulations including explicitly recognizing the valuable role that CDFIs and MDIs play as innovators in facilitating access to credit and financial services in LMI communities. CRA is highly valuable, but outdated relative to the dramatic changes in the financial services industry. Despite the politically challenging climate, we strongly urge the Federal Reserve and other bank regulatory agencies to revisit and update CRA lest it risk becoming functionally obsolete. We believe that the CRA can once again be a powerful tool to support disinvested communities, as well as expand the capacity of CDFIs and MDIs serving underserved communities.

  CRA needs to be updated to reflect the movement away from bricks-and-mortar branches toward mobile, internet and other digital delivery mechanisms. Federal Reserve and FDIC research reveals un- and under-banked consumers are more likely than other demographics to access financial services through mobile devices, prepaid debit cards, or other nontraditional means. Over the 20 years since that last overall of CRA, CDFIs and MDIs have also emerged as impactful innovators in forging new paths to reach under-served markets.

We thank you for the opportunity to discuss how the current regulatory environment is affecting CDFI and MDIs, as well as the people and communities they serve. We share the concerns of lawmakers and regulators about protecting the soundness of the financial system and promoting consumer protection. Yet, as noted, we are gravely concerned that many well-intended Dodd-Frank regulatory changes are having unintended consequence of significantly reducing credit availability and access to financial services in LMI communities.   We believe that some modest modifications could make a significant difference in the economic well-being of LMI communities across the nation.

We welcome the opportunity to continue this dialogue with the Treasury Department. Thank you for considering these important matters. Please contact Jeannine Jacokes at 202-689-8935 ext. 222 or jacokesj@pcgloanfund.org or Michael Grant at (202) 588-5432 or mgrant@nationalbankers.org.

Sincerely,

Jeannine Jacokes
Chief Executive Officer
Community Development Bankers Association

Michael Grant
Chief Executive Officer
National Bankers Association

CDBA Community Development Bankers Association
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October 6, 2016

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW.
Washington, DC 20552

RE: CFPB-2016-0025, RIN 3170-AA40

Dear Ms. Jackson:

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments on the proposed rule for Payday, Vehicle Title, and Certain High-Cost Installment Loans as published in the Federal Register on June 2, 2016.

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 123 banks with the Treasury's Community Development Financial Institutions (CDFIs) designation – which means at least 60% of total lending, services and other activities are targeted to low and moderate income (LMI) communities. CDFI banks have a primary mission of working in impoverished urban neighborhoods and distressed rural areas with declining economic bases. CDFI banks provide financial products and services designed to build, not strip, wealth from hard working families.

CDFI banks strongly support the efforts of the Consumer Financial Protection Bureau (CFPB) to protect consumers. The proposed rule makes important strides to curb some of the most abusive pay day lending practices that force too many consumers into a negative spiral of unaffordable debt and make economically vulnerable consumers and their communities more fragile.

CDFI banks are firmly committed to serving LMIs and promoting financial inclusion. Thus, we are concerned that many well-intended consumer protection provisions of the proposed rule may have the unintended consequence of significantly reducing credit availability and access to financial services for the very customers it is trying to protect. The economic needs that drive consumers to pay day lenders will always remain. A Center for Financial Services Innovation (CFSI) analysis found that one-third-plus of all households report frequently or occasionally run out of money before the end of the month. In addition, more than four in 10 households report that they struggle to keep up with their bills and credit payments.

CDBA recommends that the new rule provide greater clarity for how good lenders can continue to serve customers. We also ask that the rule provide mechanisms to promote product innovation that can offer responsible alternatives to payday loans.

Complexity and Compliance: We are concerned that complexity of the rule itself could hinder transparency and enforcement. Such complexity may discourage good lenders – particularly small banks and credit unions from continuing to offer small consumer loans because they cannot afford the additional compliance costs and regulatory risk. The specific provisions that present the greatest risks for consumers and lenders are the Ability to Repay standards for longer term loans. Successful regulation should make a distinction between good credit offered by responsible lenders and debt traps of unscrupulous providers.

Short Term Loans: We support the proposed rule's provisions for products with maturities of 45 days or less. Historically, these products have been the most abusive and detrimental to the economic security of consumers. The new rule will shift the market to longer term installment loans with smaller, more affordable payments - which are very positive changes.

Long Term Installment Loans: The proposed rule is intended to curb the harmful practices of payday and other high-cost lenders. Yet, CDFI banks are concerned that the rule could negatively impact the small consumer loans they originate because it covers loans with "all in" APRs greater than 36% inclusive of application and other fees. The heavy documentation and underwriting approach of the Ability to Repay (ATR) will primarily discourage low-cost lenders, but not payday lenders -- that are willing to pass along higher costs to borrowers and absorb the higher compliance costs. To mitigate this circumstance, CDBA strongly encourages the CFPB to include several exemptions that will allow responsible lenders to offer lower-cost small loans without incurring undue regulatory risk and compliance burden and costs:

1. Low Cost Loan Exemption: We support the proposed rule's exemption of loans that have APRs of 36% or less and terms longer than 45 days. Maintaining the availability of low cost small dollar loans is important for households of modest means to manage emergencies and inevitable ebbs-and-flows in income. We believe that the vast majority of small dollar loans made by CDFI banks will fall within this exemption.

2. Preserving Service for Customers with the Smallest Loans: CDFI banks are most concerned that some of their smallest loans could be inadvertently swept into the ATR requirements. CDFIs serving customers of modest means often extend "one-off" loans to accommodate emergency needs of existing customers under $1,000 (and often less than $500). A $500 loan with a $32 application fee, a moderate (10%) interest rate, and a 3 month (90 days) term yields an APR of 36.09%. This affordably priced loan will trigger ATR, but is far cry from a payday lender's 400% APR. For banks to offer loans of a few hundred dollars, streamlined origination and compliance framework is needed.

   CDFI Banks operate in communities that are most often targeted by payday lenders because households are more likely than higher income communities to be living paycheck-to-paycheck. As such, CDFI banks have been on a front line in developing products to combat debt trap payday loans. See Attachment A for a sample of small dollar loan alternatives that are offered by CDBA members.

We recommend the following three exemptions that would assist responsible lenders in offering viable alternatives to payday loans:

A. <u>Low Volume Exemption</u>: Most CDFI banks are small. As of Q2 2016, they range in size from $25 million to $2.7 billion in total assets ($349 million average). As such, the volume of small dollar lending that many do is modest and may be a minimal source of revenue – but they do it as a courtesy for their customers. Many small lenders will not be able to bear the cost and risk of compliance under the ATR requirements. Despite their commitment to their communities, the proposed rule risks these institutions withdrawing from offer small loans.

To address this challenge, we recommend the CFPB create a low volume exemption. This recommendation is our highest priority recommendation. CDBA recommends that the CFPB exempt lenders from ATR if they originate less than 2,000 small dollar loans annually that would otherwise be classified as "covered" loans provided revenue from such loans do not exceed 10% of a lenders gross annual revenue for banks and credit unions under $10 billion in assets. Generally, this provision would allow most CDFI bankers to continue with their current small dollar product offerings and would be straightforward and practical to implement.

B. <u>Affordable Payment Exemption</u>: As a complement to the low volume exemption, we support a streamlined compliance option that will allow lenders to extend affordable credit at a larger scale and provide real alternatives to payday products in their communities. Specifically, we support the "5 percent payment-to-income alternative" that was outlined in the CFPB's 2015 proposal at 81 FR 48040. Under this alternative, small installment loans would be exempt from ATR if: (1) they are for a term ranging from 46 days to 6 months; and (2) monthly payments do not exceed 5 percent of a borrower's monthly income. As outlined by the CFPB, this alternative would provide a streamlined compliance option for formalized small loan programs. We support this proposal, but believe it could be improved by: (1) eliminating the two loan limit per borrower -- lest it create incentives for borrowers exceeding two loans to seek high-cost payday loans from non-responsible providers; (2) allowing lenders to report these loans to a credit bureau on a monthly basis (versus the CFPB's proposed real time database); and (3) offering the option of setting payments using the up to 5 percent payment-to-income ratio or the use of deposits as evidence of income with payments set at 6% of net deposits.

3. <u>Innovation Exemption</u>: Residents of low income communities are among the consumers with the greatest need for affordable and responsible financial services alternatives. These communities and their residents are the focus of CDFI banks. The "secret sauce" of CDFI banks, however, has always been our ability to be flexible and craft sustainable products and services to meet the needs of our unique customers. The proposed rule, however, leaves little rooms for innovation for CDFI banks and other responsible lenders to experiment without regulatory risk. The proposed rule does not eliminate pay day lending; rather it curbs only the worst abuses. The way to eliminate the lure of fast high-cost payday loans is making better and affordable products available to outcompete payday, as well as regulate the worst abuses.

   The intersection between regulation and responsible innovation is unclear. Responsible innovation in the financial services industry starts with a bank's leadership to commit to solve a customer or business need, the courage to develop it, and the ability to build the capacity to launch and maintain it. The ability to test a product early in its development to understand customer demand and preferences is critical. Void of a safe place to experiment with real customers, a bank has to accept regulatory criticisms in the pursuit of the ultimate goal of safe-and-sound, responsible innovation.

   For example, Sunrise Banks based in Minneapolis-St. Paul faced such challenges when creating its TrueConnect small dollar loan product. Offered as an employee benefit, TrueConnect revolutionizes the process for making responsible small loans to employees in cooperation with employers as an alternative to payday loans. Delivered via an online platform with an automated process, loans are affordable and payments are made as a paycheck deduction – similar to other benefits. Loans have a duration of one year and an interest rate of 24.99%. Sunrise began True Connect as a pilot with its own employees to learn how to improve its product, process, and technology. The initial review from regulatory agencies, however, significantly increased the cost and extended the time of product development while the product was still in its controlled pilot. Under the proposed CFPB rule, innovation will be hindered if providers do not have sufficient room to experiment without fear of regulatory action such, as was possible in the Sunrise and other banks efforts during their pilot phase (See Attachment).

   CDBA recommends that the proposed rule include an innovation pilot program that would exempt good lenders from the ATR requirement. Entities certified as CDFIs should be automatically eligible to participate. The CFPB would develop criteria for selecting other participants. Program participants would be granted greater flexibility to develop alternative pricing models, loan structures, underwriting, partnerships or other product elements in order to create responsible, consumer friendly products that can scale up and provide real alternatives to payday loans. Program participants would be required to report to the CFPB on its innovations and participate in program evaluations. The CFPB would issue a "no action" letter to program participants for piloting innovative products. Under the pilot, a "no action" letter can be rescinded if a participant fails to report or if the agency finds that the product(s) are harmful to customers.

CDBA strongly supports the efforts of the CFPB to protect consumers. The proposed rule, however, could discourage good lenders and reduce the amount of responsible credit that is available thus exacerbating the problem. We strongly encourage the CFPB to find ways to keep the good players in the markets. We also recognize that the economic needs that drive consumers to payday lenders will always remain.

CDFI banks and other responsible lenders need sufficient regulatory clarity and flexibility to develop high-quality responsible products. In 2013, the CFPB recognized the important role that CDFIs play in serving under-served communities and vulnerable populations when it exempted them from the Ability to Repay requirements of the Qualified Mortgage rule. We would fully support the CFPB extending the small dollar loan Ability to Repay exemption to CDFIs.

We strongly encourage the CFPB to find a way to balance the competing goals within its mandate to facilitate a robust marketplace of good choices for consumers. As a nation, we have seen what happens when low-income markets and vulnerable populations cannot access the banking system. Non-regulated predatory lenders and service providers will fill the gaps. As the last decade has demonstrated, the consequences are dire not only for LMI families and communities, but for the economy as a whole.

If you have any questions, please contact Jeannine Jacokes, CDBA Chief Executive Officer, at 202-689-8935 ext. 222 or *jacokesj@pcgloanfund.org*.

Thank you for considering our recommendations.

Sincerely,

Jeannine S. Jacokes
Chief Executive Officer

On behalf of the Membership of the Community Development Bankers Association

ABC Bank (Chicago, IL)
Albina Community Bank (Portland, OR)
Bank2 (Oklahoma City, OK)
Bank of Anguilla (Anguilla, MS)
Bank of Commerce (Greenwood, MS)
Bank of Kilmichael (Kilmichael, MS)

Bank of Lake Village (Lake Village AR)
Bank of Montgomery (Montgomery, LA)
Bank of Winona (Winona MS)
BankFirst Financial Services (Macon, MS)
BankPlus (Ridgeland, MS)
Beneficial State Bank (Oakland, CA)
Broadway Federal Bank (Los Angeles, CA)
Carver Federal Savings Bank (New York, NY)
Carver State Bank (Savannah, GA)
Central Bank of Kansas City (Kansas City, MO)
Citizens National Bank (Meridian, MS)
City First Bank of DC (Washington, DC)
City National Bank of New Jersey (Newark, NJ)
Community Bancshares of Mississippi (Brandon, MS)
Community Bank of the Bay (Oakland, CA)
Community Capital Bank of Virginia (Christiansburg, VA)
Cross Keys Bank (St. Joseph, LA)
Farmers & Merchants Bank (Baldwyn, MS)
First American International Bank (Brooklyn, NY)
First Eagle Bank (Chicago, IL)
First Independence Bank (Detroit, MI)
First Security Bank (Batesville, MS)
First SouthWest Bank (Alamosa, CO)
FNBC Bank (Ash Flat AR)
Guaranty Bank and Trust Company (Belzoni, MS)
Illinois Service Federal Savings and Loan Association (Chicago, IL)
Industrial Bank (Washington, DC)
International Bank of Chicago (Stone Park, IL)
Mechanics and Farmers Bank (Durham, NC)
Merchants and Planters Bank (Raymond, MS)
Metro Bank (Louisville, KY)
Mission National Bank (San Francisco, CA)
Mission Valley Bank (Sun Valley, CA)
Native American Bank (Denver, CO)
Neighborhood National Bank (National City, CA)
Noah Bank (Elkins Park, PA)
Northern Hancock Bank (Newell WV)
OneUnited Bank (Boston, MA)
Oxford University Bank (Oxford, MS)
Pan American Bank (Chicago, IL)
Peoples Bank (Mendenhall, MS)
Planters Bank and Trust (Indianola MS)
Priority One Bank (Magee MS)
Richland State Bank (Rayville LA)
RiverHills Bank (Port Gibson, MS)

Savoy Bank (New York NY)
Security Federal Bank (Aiken, SC)
Sycamore Bank (Senatobia MS)
Southern Bancorp (Little Rock, AR)
Spring Bank (Bronx, NY)
Start Community Bank (New Haven, CT)
State Bank & Trust Company (Greenwood, MS)
Sunrise Banks (St. Paul, MN)
The Bank of Vernon (Vernon, AL)
The Commercial Bank (DeKalb, MS)
The First, A National Banking Association (Hattiesburg, MS)
The Jefferson Bank (Greenville MS)
United Bank (Atmore, AL)
United Bank of Philadelphia (Philadelphia, PA)
Urban Partnership Bank (Chicago, IL)

Attachment A

Examples of Small Dollar Loan Products Offered by CDFI Banks or Piloted by CDFI Banks

CDBA offers the following examples of Small Dollar loan products currently offered by its members. Given the significant challenges faced by CDFI banks in combating the negative effects of predatory lenders on individuals and communities, it is important that the CFPB's small dollar rule allow responsible lenders to continue to offer their existing products, as well as sufficient flexibility for banks to experiment and develop products tailored to the needs of their local markets.

BankPlus – Based in rural Belzoni MS, has expanded to more than 60 locations across the state. BankPlus was one of the original 28 bank participants in the FDIC's landmark 2008 Small Dollar Loan Pilot Program. The bank's CreditPlus product was launched in 2008 as an alternative to high cost payday loans and check cashing services. To obtain a loan, customers must participate in a 3-hour financial literacy program. Borrowers with a credit score of 500-599 can qualify for a $500 loan. Credit scores of 600 or above qualify for a $1,000 loan. Half of the loan proceeds are deposited into a savings account that serves as collateral. The remainder is deposited into a checking account for immediate use. Borrowers with a credit score below 500 or those with no credit score can qualify for the $500 Credit Builder loan where all proceeds are deposited into the savings account. The interest rate is 5% fixed. No fees are charged.

From 2008 thru August 2016, BankPlus originated more than 25,000 CreditPlus loans totaling $18.8 million. Among 18,803 loans recently analyzed, 10,170 were to customers with only one CreditPlus loan while 8,600 were to customers with more than one loan. Among the latter group of customers, more than 51% increased their credit scores by an average of 47 points between the two loans. Nearly 16% of all CreditPlus participants had no credit score when they entered the program – meaning the program is reaching a key un- or underbanked market segment and enabling them to establish a credit history. Further, nearly 500 customers had a credit score of 620 or higher upon applying for their second CreditPlus loan. This score is a critical threshold required by the secondary market for those seeking mortgage financing to purchase a home. Approximately 32% decreased their score between the two loans and 1% reported no change in credit score. To date, approximately one-fourth of CreditPlus loans have been charged off which translates into 8% of total loan dollars (after capturing savings accounts held as collateral, payments received and/or recoveries).

Building on the success of this product, the CreditPlus Auto loan was created for customers completing two CreditPlus loans. The CreditPlus Auto product has the same underwriting terms as other BankPlus Auto loans, except that the interest rate is capped at 7.5% and customers are given 60 days before the first payment is due. Launched in late 2014, 28 loans totaling $318,283.15 (average $11,36) have been made. Borrower average credit score for these loans is 596 and the average interest rate is 7.092%.

Beneficial State Bank: In 2011, Beneficial State Bank of Oakland, CA launched a pilot of the "PAL Loan," a product designed to meet underserved customers' short-term cash needs. The PAL loan was offered as an employee assistance benefit through partner employers. Positioned to provide an alternative to and compete against online and brick and mortar payday and cash advance providers, loans of $750 to $1,000 were made available for a term of 9-12 months at an 18-22% interest rate, generating with the fee of $35 upon loan approval, an APR of 25-29%. By comparison at the time, one million Californians took out payday loans annually paying $450 million in loan fees with an average APR of 459%. The PAL product did not allow rollovers and all fees were clearly disclosed at the time of application. Loan decisions were made upon income verification completed in one to three days following application. The PAL loan program pilot ran from 2011-2013, gathering data across 1,163 loans and over $1.1 million loaned. This experience and data provided critical insights for BSB's next pilots in safe and affordable credit for low-to-moderate, small dollar borrowers.

First Eagle Bank's Credit Builder Program; launched in 2012 is a combination low-interest loan and savings program that helps a customer establish a good payment history, an important step in building a higher credit score. Operating in the City of Chicago and surrounding areas, First Eagle serves neighborhoods that have been hit hard by the recession. The Bank has always taken an active role in its community and is committed to providing credit, capital, and financial services to underserved communities.

Customers can borrow from $250 to $2,500 for 12, 18 or 24 months at a 5% APR. No fees are charged and no credit score is needed to participate. The money borrowed is placed in a Savings Account at the bank that earns interest. When the customer makes a final payment, they can withdraw the money or leave it invested. By the end of the Credit Builder loan, customers typically see an improved credit score (based on payment history) and they have a jump start on savings. In 2015, First Eagle Bank booked a total of forty (40) loans with the aggregate balance of $30,250. A total of forty-nine (49) loans were paid off during 2015.

Guaranty Bank has developed two small dollar loan products to help customers build credit history and access credit in the heart of the rural Mississippi Delta. Both programs require completion of a series of financial literacy classes.

> *New Horizon Saving Deposit Loan* is a credit builder product. Loans are available from $500 to $2,000 with an interest rate of 6% for a term of 12-24 months. A maximum debt-to-income ratio of 45% is required. Funds borrowed are deposited in the customer's bank account and held as collateral. If a customer does not have a bank account, a New Horizon account is created with no minimum balance required. When a customer makes a final loan payment, they can withdraw the funds. Over the term of the loan they are building their credit score and history.
>
> *New Horizon Small Dollar Loan* is available to meet immediate household needs. Loans are available from $500 to $2,000 with an interest rate of 13% for a term of 9-24 months. A maximum debt-to-income ratio of 40% is required. A minimum credit score of 600 is required for loans above $1,000. Customers without a credit score may be able to participate if all other program criteria are met. Half of borrowed funds are deposited in the customer's bank account as collateral and half is available for immediate use.

Over the past four years, 353 loans totaling $421,612 have been originated, with a charge off rate of 5.96%. A total of 2,488 individuals have participated in financial literacy class and 1,772 (71%) completed the 5-week course. The total number of encounters for the classes held directly was 7,640 (total number of participants that attended each one of the classes). Of this group, 353 customers took out a New Horizon loan.

Guaranty led a state-wide effort in 2014 to organize other Mississippi based CDFI banks and non-profits to provide a credit building product – the SCORE product (Small-dollar, Credit, Overhaul, Repair, &

Elevate). The credit score minimum for this product is lower than the small dollar loan program. This product is only offered after successful completion of a 12-hour financial literacy training program held over a five-week period. To date, 18 banks have participated in the program. The total number of customers served amount all the banks is not known currently and this information is currently being collected.

Spring Bank: Based in the South Bronx and Harlem in New York City, Spring Bank was founded with a mission of providing financial services that were a responsive alternative to payday lenders and check cashing services. In 2014, Spring Bank launched two products focused as a payday alternative and to promote credit building.

> *The Borrow-And-Save Loan* is available for $1000 to $1,500 at an interest rate of 16% for a term of 12 months. A $20 application fee is charged to all applicants. At origination, loan proceeds are placed in a high yield savings account, of which 75% of the loan is available for immediate use while 25% is held in the savings account and available, with accumulated interest, when the loan is paid. The Borrow-and-Save loan is designed to provide affordable credit and encourage a regular savings plan. It also offers a financial alternative to the high-interest loans offered by non-bank providers. There is no minimum required credit score. Loans are underwritten on the ability to pay. Over the term of the loan, borrowers are establishing or improving their credit score and developing savings.
>
> *The Credit Builder Loan* provides a way for customers to improve or establish a credit score. Customers can borrow from $500 to $1,500 at an interest rate of 8%. A $20 application fee is charged to all applicants. There is no minimum required credit score. The money borrowed is placed in a savings account or CD at the bank. Over the term of the loan, the borrower makes monthly payments of principal and interest. At the end of the loan, all funds can be withdrawn. Customers have established and/or seen an improved credit score.

In 2015 Spring Bank launched the Employee Opportunity Loan.

> *The Employee Opportunity Loan (EOL)* is a loan of up to $2500 offered by Spring Bank in partnership with employers. There are currently 12 employers in the program and 6000 eligible employees. There is no minimum required credit score. Loans are underwritten on the ability to pay. Employees must be employed for one year to be eligible. Loan payments are transferred from payroll to a Spring Bank savings account, thus creating a simple mechanism for borrowers to continue to save after the loan is paid. The EOL provides both an alternative high cost products and a better borrowing option than dipping into retirement savings. This product is via a custom built on-line platform.

To date, the bank has served over 600 applicants, including 395 that received loans totaling $719,000. The bank has originated 192 Employee Opportunity Loans, 107 Borrow and Save loans, 27 Credit Builder loans, and 67 Unsecured Consumer loans (these borrowers applied to Borrower and save, but were eligible for a loan at a lower rate based on good credit scores). The Bank refers all clients who cannot be funded to one of our financial counseling partners including Ariva which is co-located at the Bronx headquarters. The average annual income of these customers is $28,000 and average credit score is below 600.

Sunrise Banks has a mission to be the most innovative bank empowering the underserved to achieve. Sunrise is consistently working to innovative and develop new low-cost products that are accessible to underserved individuals and communities.

In pursuit of this mission, Sunrise launched TrueConnect in 2014. TrueConnect is a small dollar installment loan targeted to low-and -moderate income individuals. TrueConnect is unique in that it is offered through an employer and works in tandem with a company's payroll system, allowing employees to make payments directly from their paycheck. TrueConnect is designed as a 12-month installment loan with payments of principal and interest and no fees. An individual can be approved for a loan amount of $1,000, $1,500, $2,000 or $3,000 capped at 8% of their wages to avoid excessive borrowing. TrueConnect is offered at 24.99% APR; the average payday loan APR is 400%.

To qualify for the loan, an individual must be employed at their current employer for at least 6 months. As the product does not require a credit check, it is available to individuals with blemished credit records or individuals with no credit record. The Bank reports payments back to the credit bureaus giving the individual the opportunity to build their credit. Sunrise offers financial budgeting and counseling through Financial Choice, a program available to all Sunrise Banks' customers. Participation in Financial Choice is not a requirement for a TrueConnect loan.

Sunrise initially tested the product with its own employees. The product has since been marketed to a variety of small business, nonprofits, and public sector institutions in order to increase access to responsible products and services that help improve the financial health of the underserved. Since the product's inception, Sunrise has funded 835 loans totaling over $1.3 million. The average salary for borrowers is $30,000 per year. While the product is still new, initial estimates of overall losses are 2.7%. As an example of usage, one nonprofit employer offering the product has had 10.7% of employees utilize a TrueConnect loan, totaling $500,000 borrowed, with an average loan size of $1,300 and average borrower salary of $27,000. TrueConnect shows promise in helping individuals find an affordable and responsible way to meet immediate, unexpected needs for cash for common situations such as a medical bill or car repair.

Southern Bancorp is on a mission to ensure access to affordable capital in rural Arkansas and the Mississippi Delta. Southern offers an array of small consumer loans in markets that often lack access to traditional financial products.

Each year, Southern Bancorp originates approximately 6,000 loans and holds approximately 12,000 in its portfolio. Over 50% of its loans are for less than $10,000. Many of those small loans are unsecured consumer loans with a typical amortization between 6 and 12 months and rates of less than 14%, keeping payments very affordable. The details of the bank's small dollar loan programs are outlined below:

> *Credit Builder CD Loan* assists customers build or repair credit. Loans are available from $500 to $1,000 at an interest rate of 5.7% for 12 months, of which half is deposited into an interest-bearing CD. Borrowers make payments, which are reported to the major credit bureaus until the loan is paid-off. Once the loan is paid off, the customer not only has a higher credit score, but has established a savings account. Southern has made 340 Credit Builder loans. Working with Southern's financial counselors, borrowers have increased credit scores by an average of 59 points.

> *Teacher Certification Loan* product was launched to retain high quality classroom teachers and boost teachers' professional achievements. Loans of up to $2,500 at 5% for 5 months are available to cover costs associated with National Board Certification (the highest standard for teachers). With certification, teachers with modest income can improve their average salaries by 16%. To date, Southern has made 12 Teacher Certification Loans totaling $30,960.
>
> *Debt Consolidation Loans* are available to help customers escape from high cost lending traps and credit card debt. In 2014, Southern served 166 people with debt consolation loans averaging $4,100 and 88 loans for medical expenses which averaged $3,300. The average interest rate on this product is 7.8% with an average term of 18 months.
>
> *Auto Loans* are available as an alternative to high priced auto dealer financing that often charge rates comparable to payday lenders, as compared to an average interest rate of 8.6% offered by the bank. Southern's 234 vehicle loans averaged just over $5,000 each (2014) for an average term of 24 months.
>
> *Fresh Start Loan* assists customers with overdrawn checking accounts by helping them gradually repay the overdrawn amount, and by returning their account to current status. Southern made nearly 300 Fresh Start loans in 2014 at an average rate of 0% for a term of 9 months.

Southern Bancorp recently also launched a small dollar loan pilot (currently testing with Southern employees only) focused on automation of the loan origination, funding and repayment process. Loan amounts are based on payroll (loan amount of $250, $500 and $1,000 may not exceed borrower's two-week payroll amount), payments are based on a 12-month amortization and an interest rate of 16.99%. Online application process takes only a few minutes and the loan is instantly funded in the employee's account. Payments are automatically withheld from paychecks, similar to other benefit payments such as health insurance premiums. The target audience for this product are payday loan borrowers and financial education is encouraged as a part of the borrower experience.

<u>United Bank of Atmore, Alabama</u>: Serving southwest Alabama and northwest Florida, the rural economy served by United Bank is based on agriculture and home grown businesses and has a median income in 2013 of 58% of the Alabama statewide median and 48% of the United States median income. The bank launched its Credit Advantage Small Dollar Loan Program in May 2014 to encourage savings, educate customers with modest incomes about how to improve their personal finances, and serve as an alternative to high cost non-bank providers.

> *Credit Advantage* loans are available for amounts of $500 to $2,000, of which half is placed in a CD as collateral. The CD is held as collateral for the term of the loan – but a hardship withdrawal waiver will be considered on a case-by-case basis for emergencies. Terms are available for 12, 18 and 24 months at a 10% interest rate. Fees are not charged on the account. The account is available for customers with credit scores up to 625, a maximum debt-to-income ratio of 47%. Customers with no credit score are eligible for $500. To receive a second loan, customers must complete a financial education course conducted by Consumer Credit Counseling Services of Mobile. Customers may receive up to 3 Credit Advantage Loans.

The bank has originated 317 Credit Advantage loans totaling $469,980. The average income of customers is $28,310 and average household size is 2.55 people. Incomes range from $8,000-$65,000.

Given the early stage of the program, no data on credit score improvements are available. The annual charge off rate is 20.67%.

Urban Partnership Bank, which serves distressed communities in Chicago and Detroit, offers two secured Certificate of Deposit products that allow customers to access "next day" funds – a Consumer Installment Loan and a line of credit.

> *UPB Consumer Installment* loan is available in amounts of $1,000 to $50,000 at an interest rate of 3.0 – 3.75% for up to 5 years. Payments are fully amortizing. All borrowed funds are deposited in the customer's bank account as collateral and is available for immediate use.
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> *UPB CD Secured Line of Credit* is available in amounts of $1,000 to $250,000 (depending on credit limit) at a variable interest rate with interest only payments. All borrowed funds are deposited in the customer's bank account as collateral and is available for immediate use. Interest rates are index based on the prime rate and capped at prime. A customer can pay down the principal and draw down new funds throughout the term of the loan.

No credit scores are required and no fees are charged for either product. Financial literacy workshops are available to all customers, but not required. To date, the two products have served 34 customers. All of the customers have borrowed $30,000 or less. 29 customers have borrowed $10,000 or below (17 were $5,000 or below, and 11 were $1,000 or below).

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COMMUNITY REINVESTMENT ACT REGULATORY AMENDMENTS

CDFI Banks strongly support the purposes and objectives of the Community Reinvestment Act (CRA). CRA was enacted into law 40 years ago and the last significant regulatory overhaul was 20+ years ago and it has in some ways lost some effectiveness for Low and Moderate Income (LMI) communities and those who serve them. The financial services industry has radically changed in the last two decades, but CRA has not. We believe that the CRA can be a powerful tool to: (1) promote investment in LMI communities; and (2) support and expand the capacity of CDFI banks to serve underserved communities. With a few small changes, it could help CDFI banks expand their capacity, reach and impact.

CDBA strongly recommends greater policy coordination between the bank regulatory agencies' implementation of CRA and the Treasury's new annual CDFI certification requirements.

BACKGROUND: In 2016, the CDFI Fund launched a new annual certification report that will require geocoding of all loans and services within a bank's entire footprint. Bank regulatory agencies have a very different set of CRA reporting and compliance requirements that measure lending and service in a more geographically limited Assessment Area. All of the Federal agencies are essentially interested in the same outcomes – improving the economic well-being of LMI communities. Yet, the lack of policy coordination results in multiple standards and voluminous double reporting that creates unnecessary administrative burden and siphons resources away from CDFI banks serving underserved communities.

CDFI Bank CRA Evaluations

Given the important public policy objectives that CDFIs fulfill, CDBA recommends that the bank regulatory agencies and Treasury Department jointly design an alternative special CRA evaluation methodology option for CDFI banks that will utilize the same data as used for CDFI certification. The regulatory agencies have previously recognized distinctions between different types of banks by creating alternative CRA evaluation methodologies (i.e. small bank, wholesale bank, strategic plan). Today, bank examiners do not distinguish or recognize the CDFI certification when it considers a CDFI bank's performance under CRA – despite the fact that CDFI banks dedicate a greater portion of their overall activities to the lowest income communities. We recommend greater coordination and policy consistency between Treasury and the banking regulatory agencies for CRA compliance and CDFI certification requirements with the goal of streamlining data collection and simplifying reporting for CDFI banks.

We believe more information sharing among Federal policy makers could reduce reporting overlap. For example, in early 2016, Treasury and the National Credit Union Administration (NCUA) announced an initiative to share data collected by the NCUA that could also be used for CDFI certification. Banking regulators and Treasury should initiate similar information-sharing efforts to reduce the combined burden of compliance for CRA and CDFI certification.

Recommendation 3: CDBA strongly recommends that investments in CDFI banks receive the same treatment under CRA as those investments made in Minority Depository Institutions (MDIs) and Low Income Credit Unions.

Despite the 20+ years since CDFIs were first formally recognized by Federal policy makers and their strong performance in serving low income markets, CDFIs are not explicitly recognized under CRA in the same manner as MDIs and Low Income Credit Unions. Currently any bank can get CRA credit for providing financial or other support to an MDI or Low Income Credit Union regardless of whether or not the entity is located within a bank's designated Assessment Area. By contrast, a bank providing similar support can only be assured of getting CRA consideration if the CDFI is located in or substantially serving a bank's designated CRA assessment area.

CDFI banks should be afforded the same consideration as MDIs or Low Income Credit Unions because the CDFI standard targeting service to LMI communities is far more stringent. For example, there are 164 MDIs -- of which only 37 meet the CDFI standard of targeting at least 60% of their lending into low income communities. In recent years, the National Credit Union Administration (NCUA) has significantly revised and relaxed the requirements for qualification as a Low Income Credit Union. Twenty years ago, less than 200 credit unions met this standard. Over the past few years, NCUA has lowered the requirements and now fully one-third (2,000+) of all credit unions qualify. By contrast, only 271 credit unions (4.5% of the sector) meet the more stringent CDFI requirements.

Recommendation 4: CDBA strongly recommends that the Federal Reserve and bank regulatory agencies embark on an overhaul of the current CRA regulations including explicitly recognizing the valuable role that CDFIs play as innovators in facilitating access to credit and financial services in LMI communities.

CRA is highly valuable, but outdated relative to the dramatic changes in the financial services industry. Despite the politically challenging climate, we strongly urge the Federal Reserve and other bank regulatory agencies to revisit and update CRA lest it risk becoming functionally obsolete. We believe that the CRA can once again be a powerful tool to support disinvested communities, as well as expand the capacity of CDFIs serving underserved communities.

CRA needs to be updated to reflect the movement away from bricks-and-mortar branches toward mobile, internet and other digital delivery mechanisms. Federal Reserve and FDIC research reveals un- and under-banked consumers are more likely than other demographics to access financial services through mobile devices, prepaid debit cards, or other nontraditional means. Over the 20 years since that last overall of CRA, CDFIs have also emerged as impactful innovators in forging new paths to reach under-served markets.

FINANCIAL INCLUSION & IMPACT OF REGULATION

CDFI banks are on the front line in promoting financial inclusion and viability of small businesses and consumers. We have a mission and proven record of serving the most challenging communities in America. Some policies created to protect the safety and soundness of the banking system post-crisis may have unintended consequences of undermining financial inclusion and access to credit. These are highly complex issues.

The Federal Reserve has authority over some Dodd Frank provisions that may create challenges to financial inclusion; but, jurisdiction lies across multiple agencies, including the CFPB. Thoughtful consideration needs to be given to how each rule and how the cumulative impact of multiple rules impair the ability of CDFI banks to serve these markets. In some cases, new Dodd-Frank regulations are forcing CDFI banks (and other community banks) to suspend, modify or even discontinue necessary services. Yet, the demand and need does not end. The void is filled by non-regulated and possibly predatory lenders. Vulnerable members of our communities are impacted.

<u>Recommendation 5</u>: As noted, CDBA recommends that the Federal Reserve take a leadership role among its fellow Federal agency peers by initiating the creation of an Interagency Committee on Financial Inclusion and Community Investment. The mandate of the Committee should be to ensure that Federal rules and policies due not undermine financial inclusion and investment in LMI communities. Below are several specific examples of how well-intended regulation is having an unintended impact on LMI people and communities.