Community Development Bankers Association
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January 27, 2023

Via Electronic Submission

Ms. Melody Braswell
Treasury PRA Clearance Officer
U.S. Department of the Treasury

RE: Comment Request; Annual Certification and Data Collection Report Form and the Abbreviated Transaction Level Report, Federal Register Document Number Vol. 87, No. 239 / Wednesday, December 14, 2022; OMB Control Number: 1559-0046

Dear Ms. Braswell:

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments on the Notice of Information Collection and Request for Public Comment published by the Community Development Financial Institutions Fund (CDFI Fund or the Fund) in the Federal Register on December 14, 2022. As stated, the CDFI Fund is seeking comment on the content of the revised Annual Certification and Data Collection Report (ACR) and proposed "abbreviated" Transaction Level Report (TLR).

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. As of January 18, 2023, there are 184 banks and 147 bank holding companies with the Treasury's Community Development Financial Institutions (CDFIs) designation. CDBA membership comprises approximately 68% of the total assets of the certified CDFI bank sector, and 58% of all CDFI banks by number. Many of our members are also Minority Depository Institutions (MDIs).

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.

GENERAL COMMENTS ON THE PROPOSED ACR AND TLR

Our members appreciate the hard work of CDFI Fund staff to support the CDFI industry. We appreciate the CDFI Fund's focus in this and related proposals 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.

The proposed ACR and TLR materials are practical extensions of proposals put out for comment in late 2022 by the CDFI Fund to revise the CDFI Certification Application and related guidance, as well as introduce a pre-approval process for CDFI Target Markets.

We are concerned however, that the ACR and TLR enshrine proposed Application provisions that CDBA and the broader CDFI community have identified as potentially harmful, that will force CDFIs to be less flexible and responsive to the needs of LMI communities, and will reduce the choices available to low- and moderate income (LMI) consumers. We have recently documented our concerns in two public comment letters, submitted December 5 (CDFI Certification Application Requirements)[1] and December 16 (CDFI Target Market Assessment Methodologies)[2].

While our previous comments address our substantive concerns in detail, it will be useful here to provide summaries where they directly correspond to elements of the ACR and TLR.

SPECIFIC COMMENTS ON PROPOSED ACR AND TLR

As we wrote in December of 2022, several of the proposed changes to the CDFI Certification Application are presented as advancing critical consumer protections. However, we believe that many will have the opposite effect. These problems persist when they are carried through in to the ACR.

In some cases, otherwise legal and often constructive products will be prohibited through "bright line" standards that are automatically disqualifying. In other cases, applicants will be disqualified after a holistic review of their answer to a narrative question for which the CDFI Fund has expressed no standards for how answers will be evaluated, 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.*

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

CDFI Annual Certification Report Detail

"Board and Executive Staff Demographic Information" (Pages 11-14)

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[1] http://cdbanks.org/advocacy, CDBA and NBA Letter to Treasury on CDFI Certification Application Requirements - Dec 5, 2022

[2] http://cdbanks.org/advocacy, CDBA Comment Letter to CDFI Fund on Target Markets - Dec 16, 2022

The ACR enshrines questions to collect demographic data on board members and executive staff of CDFIs. This data is not necessary to fulfill any current, ongoing certification or program requirements relevant to CDFIs. Some individuals will decline to answer. We recommend that these questions be made voluntary, ideally in the form of an option for individuals to decline to answer.

"Line of Business" (Pages 14-15)

It is helpful that the ACR will auto-calculate the primary and secondary lines of business from data provided in the TLR. However, we suggest that the CDFI Fund consider calculations that acknowledge both the number and dollar amount of loans. This would more accurately represent the business of many CDFIs that provide significant service to customers that require smaller loans, while also acknowledging the community development value of larger loans.

"Responsible Financing Practices – Financial Products" (Pages 24-35)

We believe that a 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.*

Please refer to our December 5 letter[3] for a detailed review of the challenges introduced under this section in the revised application, as well as examples of the unintended consequences for communities served by CDFIs, and CDBA's recommended alternative to achieve the same protection while avoiding serious disruption.

Ability to Repay (ATR) – Report Item RFP1

The ATR question as stated in the ACR should be removed. This "bright line" question introduces a test that is too narrow, and ignores the CDFIs' exemption from the ATR test in Regulation Z. The CFPB's Ability to Repay/Qualified Mortgage (ATR/QM) rule exempts CDFIs because of these lenders' historic, demonstrated need for flexibility in working with people without traditional income documentation. The test as written will limit access to entirely legal and genuinely impactful loans. We do not believe the CDFI Fund should be applying a broad ATR test to CDFI Certification, given the CFPB's explicit exemption of CDFIs from this particular mortgage regulation. 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.

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[3] http://cdbanks.org/advocacy, CDBA and NBA Letter to Treasury on CDFI Certification Application Requirements - Dec 5, 2022

This test has the potential to damage LMI communities and stifle useful and responsible products. 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 in a formally documented way. 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. The new certification rules would make the CDFI alternative to payday loans unworkable in many circumstances.

Military Annual Percentage Rates (MAPR) – Report Items RFP2 – RFP3

MAPR questions as stated in the ACR should be removed and replaced with an appropriate APR standard. We support the CDFI Fund's intention to ensure that products offered by CDFIs are affordable to end users. 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.

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 and in 2022, 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, and the question as stated in the ACR should be removed and replaced with an appropriate standard.

Mortgage Loan Product ATR/QM Exempted Mortgage Loan Attributes – Report Items RP17 – RFP 29

The ACR should not include questions that seek to identify and automatically disqualify entities that offer products with specific attributes that are otherwise exempt from the ATR/QM rule.

We 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.

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

Questions that should be removed from the ACR include:

- RFP17: ". . . Loans that include negative amortization, interest-only payments, or balloon payments."

  First, this question conflates three prohibited activities. At the very least, they should be considered individually, as there is no suggestion that they are functionally related. Second, at least the latter two (interest-only payments and balloon payments) can be important tools for regulated CDFIs to both meet the needs of LMI customers *and* manage interest rate risk.

- RFP 18: "Underwrite adjustable rate mortgages at less than the maximum rate in the first five years."

  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.

- RFP19: "Offer loans with an original maximum term longer than 30 years."

  We are not aware of CDFI banks that offer loans with an original maximum term *longer* than 30 years. However, in the documentation proposed in December 2022, this was phrased as a prohibition on mortgage loans 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.

- RFP20: Does the entity "verify the income of the borrower?"

  The CFPB's ATR/QM rule exempts CDFIs from a requirement to verify borrower income because of these lenders' historic, demonstrated need for flexibility in working with people without traditional income documentation. LMI small business owners, small farmers, and individuals without W2 regular income often have a difficult time documenting their income. 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. Enforcing this standard will force many customers to seek funding from unregulated, predatory lenders. This bright line standard should not appear in the ACR.

- RFP22 – RFP25: Questions related to disclosures to small business, including “periodic payment due,” “total amount to be repaid over the life of the loan,” “total finance charges over the life of the loan,” “annual percentage rate of the loan.”

  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 by the CDFI Fund. This requirement should be removed from the ACR.

- RFP27: “Does the reporting entity sell its charged off debt to debt buyers?”

  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. These protections are strong, but could be enhanced by the CDFI Fund *without* a blanket prohibition. This blanket requirement should be removed from the ACR.

- RFP29: “If the reporting entity is an FDIC-Insured Depository Institution or state-chartered commercial or savings Bank, does the reporting entity have a current Community Reinvestment Act rating of Satisfactory or higher?”

  We 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, and certainly not without considering the value of a cure period. This blanket requirement should be removed from the ACR.

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, not to prohibit loans with an original maximum term of 30 years, not to blanket-prohibit the sale of charged off debt, and not to institute a CRA requirement in the absence of a final, joint-agency CRA rule. 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. If these standards are put in place, it will be exceedingly difficult (if not impossible) for many otherwise qualified CDFIs to continue to adequately serve LMI communities.

<u>"Responsible Financing Practices – Financial Services" (Pages 36-39)</u>

New in 2022, the CDFI Fund proposed asking depository applicants to select from a list of product features associated with depository products and transaction services that appear either to advance a community development objective or to represent consumer protections. *We strongly urge the CDFI Fund to clarify this section as it is implemented in the ACR, and not to implement any of these questions without explaining standards or setting clear expectations for how CDFIs should evaluate their offering of financial services*. The CDFI Fund has stated elsewhere 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 CDFIs cannot predict what might trigger decertification. The following questions will create serious problems by creating uncertainty for regulated CDFIs:

- RFP32: "Select each of the listed features associated with a single checking or share account (including checkless checking) offered by the reporting entity." (Plus, follow up question RFP33).

- RFP34: "For any of the reporting entity's depository accounts, is the account holder subject to any potential overdraft fees?" (Plus follow up questions RFP35 through RFP39).

Subsection for any reporting entities whose depositor accounts have potential nonsufficient funds fees.

- RFP40: "Specify the highest dollar amount charged for such a fee." (Plus follow up questions RFP41 through RFP43).

For example, RFP32 and RFP33 direct regulated depositories to select "features" of services (branch, ATM, deposit product, money transfer service, customer identification alternatives, and two secured loan products) without any insight into the purpose or consequences of making any selections. In RFP34 through RFP43, CDFIs are asked to provide information about services such as overdraft and non-sufficient funds fees that are subject to regulatory oversight.

If the CDFI Fund intends this section to identify products that are contrary to some standard for consumer protections, then the CDFI Fund should make clear what the standards are, whether there is a baseline, and in what combination the features may be issued in combination with other features. The CDFI Fund should then state what consequences there might be for answering any of these questions in any particular way. 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 what might be objectionable features, but also offers no services with features that advance a community development purpose? Are any features alone, or in several, intended to be disqualifying?

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 variety of ways, and all of their financial services are, by definition, subject to oversight by banking regulators.

<u>"Financing Entity" (Pages 39-41)</u>

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. As implemented in the ACR, unregulated CDFIs of all types and sizes will face a previously unprecedented level of administrative burden in pursuit of compliance with the "predominance" test. We urge the CDFI Fund not to apply "predominance" standards in the ACR in such a way that will discourage products and services from being developed in-house by CDFIs that know their market and their field, and are willing to innovate in the service of both.

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.

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." The standard also does not recognize that technology investments can reduce the staff-time required to manage financing activities. This can free up resources for other valuable innovations, but will unbalance CDFIs' "predominance" measure.

<u>"Development Services" (Page 41)</u>

CDBA joins colleagues across the CDFI industry in strongly encouraging the CDFI Fund to reverse proposed changes to Development Services. The CDFI Fund should not implement this section

of the ACR until it has reversed the policy as proposed for the Certification Application, and clearly aligned the ACR with an appropriate standard. Further, in is unclear how the proposals in the Certification Application are enshrined in the ACR, because the ACR's "approved options" appear to contradict the standards from the Certification Application.

To be clear: the changes proposed in the Certification Application are contrary to the spirit of the CDFI legislation and counterproductive to the stated purpose of the proposed change. In the proposed application, the CDFI Fund eliminates a foundational element of Development Service from eligibility by defining a Development Service as:

1) "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*."
2) Further, the CDFI Fund takes the extraordinary step of "clarifying" that *"*Development Services offered in connection with <u>*Financial Services*</u> *cannot be considered in a CDFI Certification Application."* (Emphasis added).

Confusingly, the approved options for Development Services identified in the ACR include multiple options that neither exclusively "promote access to and /or success with financial products" (e.g. loans), or are clearly intended to be offered in connection with financial *services* (e.g. deposit or transaction products). These approved options include, but are not limited to:

- Financial Education/Financial Literacy
- Basic Banking Skills
- Introduction to retirement savings
- Financial Management/Budgeting

The CDFI Fund's clarifications in the proposed Certification Application further compound the problem, as the standards are not consistently or clearly implemented in the ACR. Specifically problematic are the Application 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 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 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. *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.*

"Target Market" (Pages 42 - 48)

New Options for Depository CDFIs

CDBA welcomes the proposed change (retained from 2020) that allows depository CDFIs some flexibility in meeting the Target Market (TM) 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. We support these change to the extent they are implement in the ACR.

Customized Investment Areas (CIAs)

CDBA has *urged the CDFI Fund to refine its proposed approach to the CIAs. As proposed, this approach will force many changes in rural communities that will hurt CDFI Target Markets.* CDBA submitted detailed comments on this for the proposed application. We urge the CDFI Fund to ensure these changes are not implemented in the ACR.

For example, 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. *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.*

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.* The 85% threshold should not be implemented in the ACR.

Target Market Activity Attestation

On p. 45, the CDFI Fund writes: "No additional cure periods will be granted for a reporting entity that fails to meet the Target Market requirement based either on its most recently completed FY or a three-year period."

This appears to be an entirely new policy for the Fund and should not be implemented in the ACR until the proposed policy is subject to a thorough public review. For example, the CDFI Fund must clarify how an assessment related to TM will be conducted (i.e. which geocode sets

and maps will be used for transactions closed in 2022 and prior). The CDFI Fund must also clarify the circumstance under which they would seek to recapture award funds if an entity lost its certification. We recommend that the CDFI Fund address these and other questions regarding its cure policy as part of a broader review.

Accountability (Pages 48 – 51)

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, and that the ACR not implement the following proposals, whether in the section generally addressing "accountability changes," or in sections directly referencing their implementation.

Specifically, changes in the standards for accountability are invisible in the ACR, but would be implemented through questions requiring CDFIs to attest whether "the reporting entity continues to maintain Accountability to its approved CDFI Certification Target Market(s) since its CDFI Certification was affirmed by the CDFI Fund." (Page 48).

Accountability Attestation Changes Implemented Indirectly in the ACR

Board Membership as a Means of Accountability.

The CDFI Fund's proposed application "eliminates 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. This is, in itself, *an accountability enhancer*, and not a detraction. The elimination of this option should not be implemented in the ACR.

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 not to implement this policy that will be harmful to CDFIs and communities.

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

The proposed 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. We urge the CDFI Fund to ensure CDFIs are not required to certify that they have verified board member income in the ACR.

<u>Accountability Attestation Changes Implemented Directly in the ACR</u>

<u>Financial Interest Policy</u>

New in 2022, the CDFI Fund has proposed 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 should be not be implemented in the ACR.

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 “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." [4] 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.

Further, 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. 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 Financial Interest Policy should be not be implemented in the ACR until the CDFI Fund identifies how to narrow the policy to ensure CDFIs tightly police potential conflicts of interest, while allowing and encouraging constructive financial interests between CDFIs and their boards.

Source of Investment Capital Table

This table does not make sense for regulated depository institutions. If an exemption for regulated institutions is intended, it should be made clear. For example, the liabilities of depositories are complex, and include potentially hundreds of thousands of individual deposit accounts. This table should not be applied to regulated institutions in the ACR. We refer the CDFI Fund to the comments of industry colleagues at Sones and White Consulting, whom we paraphrase here:

In general, we believe regulated institutions should be exempt from this section. (1) They source their lending capital primarily using deposit funding, which is very different from all other CDFIs. (2) These CDFIs' sources of capital are already monitored by prudential regulators. (3) The CDFI Fund should be able to obtain whatever information it needs by auto-generating it from existing Call Report and FR-Y9 data.

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

If, however, the CDFI Fund determines it must have certain data that is not contained in existing regulatory financial reporting, then for regulated institutions the CDFI Fund should limit this requirement to certain specified data points and provide very clear instructions to regulated institutions regarding how they are to complete this table.

It is unclear which level of detail the CDFI Fund requires in the ACR. However, if the CDFI Fund is asking for every single deposit account to be reflected here, or even types of deposit, many of which are originated over narrow bands of time with only small, incremental changes in interest rate and term, this will be completely untenable. At a minimum, regulated depository institutions should be exempt from filling out a transaction-level table for their deposit funding because of the extremely high volume and high variance of deposit accounts involved.

If the CDFI Fund is instead requiring a summary table regarding all deposit funding, separated out by “Source of Capital,” this would still be extremely difficult because the different “Sources of Capital” identified in the table do not align with how regulated institutions keep their depositor records. We do not know how a bank would classifying every one of its deposit accounts into one of the 19 listed categories.

Contributed Operating Revenue Table

The CDFI Fund must clarify how this table will be implemented in the ACR. Depository CDFIs are already subject to extremely detailed financial reporting requirements, and the information requested in this table does not track regulatory categories at all. The CDFI Fund should state clearly whether there is an intended exemption for depository CDFIs. If no exemption is intended, the table must be reconfigured to reflect regulatory categories.

Loans and Leases Table

<u>Banks or Thrifts Subsection</u>

The CDFI Fund should clarify how the Weighted Average Interest Rate will be calculated. How will it be weighted?

<u>Holding Company Subsection</u>

The CDFI Fund should clarify whether the pre-populated data will come from the subsidiary bank’s Call Report. The CDFI Fund should also address the question of what happens if there are multiple subsidiary banks, and how a holding company should address the issue of if not all of the subsidiary banks are CDFIs.

Transaction Level Report

The proposed Transaction Level Report (TLR) guidance does not include major changes, but rather gives the reported information additional utility. We support the fields that are included in the abbreviated TLR and have no objection to the addition of the Financial Services TLR and Loan Purchases TLR, as well as the new options that were added to the existing data fields.

TLR for Loans Purchased

The CDFI Fund must clarify how the guidance treats loan purchases. The TLR should only be applicable to CDFIs that elect to use loan purchases to comply with Target Market percentages, as was historically the case.

However, a note under the "Purpose" TLR field on page 15 says, "All loan purchases originated during the reporting period will need to be reported in the TLR Loan Purchases table." If the CDFI Fund is departing from this historical option, the new rule should be justified and communicated more clearly.

Questions Related to Demographic Information of Customers

We support the inclusion of options for CDFIs that are regulatory permitted and capable of doing so, to collect and report on voluntarily provided demographic characteristics of customers. However, we appreciate the inclusion of the "Do Not Know" option for the TLR fields that address this, including but not limited to the fields "Minority Owned or Controlled," "Women Owned or Controlled," and "Low-Income Status." Many CDFI depositories do not currently track this information, for a variety of reasons, not the least of which are regularity restrictions under the Equal Credit Opportunity Act (ECOA). It would be extremely burdensome (and in many cases impossible) for them to retroactively add this information to their reports. While this information may become more manageable in the future, it is important to preserve the flexibility for CDFI in the near term.

End Users

The CDFI Fund should not proceed with this LTR until it has addressed issues with how End Users will be identified and approved for the purposes of Target Market Methodologies. Flaws in the approved methodologies will carry through to the selection required in the following two questions, which relate to Low Income Target Populations (LIPT) and Other Target Populations (OTP).

- LP38: "LITP End Users"
- LP39: "OTP End Users"

One example is that in the proposed Application and Target Market Methodology, several proxies that are both common and serve as excellent standards for proxies are not included on the approved list. We urge the CDFI Fund to include more proxies on the list, including several

related to health care, housing and education, that we have identified previously.[5] Another example is that the proposed threshold of 50% for end user eligibility (LITP and OTP) is too high. First, a 50% LITP threshold creates financial sustainability issues for non-profits serving mixed income customer bases. Second, a 50% threshold for certain OTP-serving projects may be appropriate, but a threshold that is responsive to local circumstances is strongly preferable to a strict baseline. The CDFI Fund should not discourage CDFIs from lending into projects where the end user "market to subsidized" unit ratio is 70/30 or 80/20, especially in high cost markets where the alternative to partially subsidized mixed-income housing is no affordable house at all.

We also agree with the following comment submitted by Sones and White Consulting: "'End Users', used to count the number of financial products that are directed to a Target Market should be interpreted to include loans to for-profit and non-profit businesses *and* to count the Target Market residents and Other Targeted Population members that directly benefitted from the lending activity. This is especially important for LIHTC loans, which are extremely high dollar amounts, but currently only count once for CDFIs' 'by number' percentage, although they directly benefit large numbers of Target Market residents."

CONCLUSION

CDBA fully appreciates 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 Brian Blake, CDBA Chief Policy Director at (202) 689-8935 ext 225, or *blakeb@pcgloanfund.org.*

Thank you for considering our recommendations.

Sincerely,

Brian Blake
Chief Policy Director
Community Development Bankers Association

[5] http://cdbanks.org/advocacy, CDBA Comment Letter to CDFI Fund on Target Markets - Dec 16, 2022