Community Development Bankers Association
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December 16, 2022

Via Electronic Submission

Ms. Michelle Dickens
Program Manager
Office of Certification Policy and Evaluation
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

RE: CDFI Target Market Assessment Methodologies, Federal Register Document Number Vol. 87, No. 202 / Thursday, October 20, 2022

Dear Ms. Dickens:

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) in the Federal Register on October 20, 2022. As stated, the CDFI Fund is seeking comment on a proposed list of pre-approved CDFI Target Market Assessment Methodologies.

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. As of November 14, 2022, there are 177 banks and 143 bank holding companies with the Treasury's Community Development Financial Institution (CDFI) designation. CDBA membership comprises 67% of the total assets of the certified CDFI bank sector, and 55% of all CDFI banks by number. Many of our members are also Minority Depository Institutions (MDIs).

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

GENERAL COMMENTS ON PROPOSED CERTIFICATION APPLICATION

Timing and Procedure

Our members appreciate the hard work of CDFI Fund staff to support the CDFI industry. We are grateful for the consideration CDFI Fund staff have given to this process. We support the CDFI Fund's goal of promoting transparency and reducing the burden of identifying CDFI Target Markets, and we believe that providing a list of pre-approved Target Market methodologies for each of the Target Market Components of a CDFI applicant's Investment Area (IA) can contribute to that goal. We understand and appreciate that the list will reflect "the *primary* assessment methods that have been approved" by the CDFI Fund, but "may not be a comprehensive list." Pre-approved options can provide real value to the

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communities served by CDFIs if the pre-approved methods are reasonably flexible (e.g. incorporate ranges for quantitative measures), and if the list itself accommodates additions and changes at a reasonable speed.

However, we are concerned about the content of some of the proposals. First, we believe that several proposals have the potential to limit CDFIs' efforts to meet the needs of borrowers in low-income and distressed communities. These proposals include narrower guidelines and require controls that many CDFI customers, and their end-users, will find invasive. Without adjustments, the proposals are likely to:

- Substantially increase CDFIs' compliance time and costs;
- Make it more difficult for CDFIs (especially small and emerging CDFIs) to qualify and find suitable mission-focused *and* economic deals;
- Make it more difficult for small non-profit and for-profit entities to qualify for CDFI financing.

In the worst-case scenario, CDFIs will be forced to choose between the proposed list of pre-approved options and an approval process for alternative methods that may struggle to meet demand.

We are concerned that the process for approving customized methods may create a backlog of approval requests at a time when the entire CDFI industry is grappling with the significant proposed changes to certification applications. We fear this backlog will slow down or delay response times and certifications. We urge the CDFI Fund to create a plan for managing the high volume of requests you may receive.

We do not believe that the process for pursuing these changes has been appropriate relative to the complexity and significance of the subject, and we urge the CDFI Fund to engage more directly, and more comprehensively, with the industry before finalizing any changes. This work might take the form of a CDFI Fund-led series of workshops and seminars that allow for information sharing, discussion, and cooperation. As context, these Target Market proposals were published with a roughly 60 day comment period that coincided with the release of significant proposed changes to the CDFI Fund Certification Application and Guidance by the Office of Management and Budget (OMB) on November 4, 2022[1] under the Paperwork Reduction Act (PRA).[2] The release of these Target Market Methodologies is closely entwined with the proposed CDFI Certification Application changes.[3] Further, the proposed list of Target Market Methodologies is entirely new to the public -- Unlike the proposed changes to the Certification Application, which were first presented in May of 2020 with a comment period of 90 days, there was no prior period for review.

In order to harmonize this imbalance***,*** *we respectfully ask that following receipt of public comments, the CDFI Fund engage in direct conversations with the CDFI industry to discuss and fully understand the*

[1] Federal Register / Vol. 87, No. 213 / Friday, November 4, 2022
[2] Per the subject request for comment: "In an effort to increase transparency and reduce burden *through a revised CDFI Certification Application* . . . the CDFI Fund intends to publish a list of preapproved Target Market assessment methodologies that Applicants and Certified CDFIs may use and rely upon to demonstrate that they are serving their identified Target Market(s)." (Emphasis added).
[3] The release of the pre-approved methodologies discussed in this comment letter is previewed in the CDFI Fund's October 2022 CDFI Certification Application preview document "Overview of FINAL Revisions and Modifications," slide 37, "Target Market Assessment Methodologies."

complexity of issues and challenges associated with implementing changes in the Target Market definitions.

SPECIFIC COMMENTS ON PROPOSED TARGET MARKET ASSESSMENT PROVISIONS

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

I. Pre-Approved Target Market Assessment Methodologies

a. The CDFI Fund . . . is considering whether to include as a pre-approved assessment methodology the use of a geography-based proxy to identify members of a Low-Income Targeted Population in the absence of documentation of an individual's actual income . . .

i. Should the CDFI Fund establish a geographic proxy for Low-Income status as an approved Target Market assessment methodology, such that a Financial Product or Financial Service delivered to a resident of a qualifying block group would be deemed delivered to an LITP, even if the proxy might overestimate the share of LITP borrowers served by an Applicant or Certified CDFI?

This idea has merit and deserves further study. We urge the CDFI Fund to allow the CDFI industry more time to engage in an in-depth, substantive analysis to evaluate this option. It is possible that a proxy like this would help direct products and services to low-income communities that might otherwise be underserved. While the CDFI Fund correctly notes the risk of overestimating the share of eligible borrowers (e.g. if the threshold of low-income residents of the geography is set at 30%, which is posited in the proposal), the risk is not exclusively in one direction. There may be LITP borrowers that would be unjustifiably underserved if a higher threshold were set. In short, multiple models ought to be reviewed to find the best level. We welcome a proposal of this type, but feel strongly that the current process does not do justice to this important topic.

b. Should a Financial Product delivered to a business, not owned by a member of a Targeted Population or located in an Investment Area, that is providing jobs, products, or services to a Targeted Population or Investment Area, be deemed delivered to a Target Market? If yes, are there assessment methodologies for end users, other than those already included in the list that the CDFI Fund should consider? What are those assessment methodologies? Should approval of any such methodology associated with jobs to a Targeted Population or located in an Investment Area be dependent on standards for a livable wage or other quality job metrics?

We are glad that the CDFI Fund has developed a list of proxies for service to LITPs, but *we believe the CDFI Fund should do more to recognize the validity of end users in assessing CDFI service to a Target Market.*

The CDFI Fund's authorizing statue makes very clear that evaluating CDFIs' support for "provid(ing) jobs" is a permissible methodology for establishing CDFI service to a Target Market. The U.S. code states:

> "Financial Assistance made available under this subtitle may be used by assisted community development financial institutions to serve investment areas or targeted populations by developing or supporting – *businesses that – (i) provide jobs for low-income people* *or* are owned by low-income people."[4] (Emphasis added).

Further, we believe that it is clear that the statute considers "provid(ing) jobs" for employee end users to be both on par with, and distinct from, providing capital for business owner end users.

A number of highly impactful CDFIs are focused on improving the economic stability and mobility of populations via loans that provide jobs, products, and services to Target Populations. This activity is entirely consistent with a community development mission, as well as the statute. For example, job creation is an essential part of providing service in low-income communities in which workers struggle to gain the "skills or training they need to get jobs that pay a family supporting income."[5] Lack of employment opportunity traps individuals and families in cycles of poverty, whereas creating employment opportunity advances the community development goals of the CDFI Fund. This makes it very important to identify an assessment method to recognize employment that is supported by CDFI financing.

We recommend that the CDFI Fund consider at least one tested, accessible approach to evaluate how well loans to businesses serve IAs by providing jobs. The Small Business Administration's (SBA) "Jobs Created and Retained" data collection practices under the 504 program are a good example.[6] Per the SBA's instructions to Community Development Company (CDCs):

> "The primary goal of the 504 Loan Program is to encourage economic development by enabling small businesses to create or retain jobs within their communities. . . To allow SBA to monitor and manage this core objective of the 504 Loan Program*, a CDC is required to verify, document and report on the actual number of jobs created and/or retained by its 504 loan borrowers* as of each debenture's two-year funding anniversary. . . Tab 4 of SBA Form 1253 requires a CDC to *collect this information in writing from a borrower on a document signed and dated by an authorized employee of the borrower*." (Emphasis added).

We believe the SBA's 504 process is an appropriate template for CDFIs lending to both for-profit and non-profit businesses, and should not be overly burdensome to implement if a CDFI wishes to demonstrate its service to an IA in this way.

Unfortunately, the pre-approved assessment methodologies listed for other end-users (e.g. for non-profits serving LITPs, and employers wishing to demonstrate that they provide employment opportunities to LITPs) may be too strict for many CDFI products. For example, several proposed methodologies will require a CDFI to collect individual (or household) income or demographic data from end users. While these methods may be "pre-approved," many CDFIs will find it impossible to qualify a loan to a small business that employs or provides services to low-income or OTP-qualifying individuals.

[4] 12 U.S.C. 4701 et seq.; www.govinfo.gov/content/pkg/USCODE-2015-title12/html/USCODE-2015-title12-chap47.htm

[5] Annie E. Casey Foundation; www.aecf.org/work/economic-opportunity/work-education-and-income

[6] SBA CDC Best Practices Guidance - Jobs Created and Retained Reporting; www.sba.gov/document/support--cdc-best-practices-guidance-jobs-created-and-retained-reporting

This is because most employers cannot know an individual employee's contribution to their *family* income (particularly under the currently proposed definition which includes "any person age 15 and up who lives in the same dwelling unit and is related by birth, marriage or adoption") and most cannot ask employees about their participation in pre-approved government programs (such as SNAP) that serve as income-proxies. Most non-profits, such as food banks, cannot verify the income of individual clients for programs that do not have a built-in income test.

Further, related to OTPs, employers cannot *compel* their employees to answer questions about their race or ethnicity, and neither CDFIs nor their borrowers should be required to *visually* identify employees race and/or ethnicity, which are complex personal traits that are properly defined only by the borrower. In this regard, CDBA recommends the CDFI Fund pursue a number of alternatives, including collaboration with the CFPB on identifying approaches to develop proxies for race and ethnicity based on publicly available information, such as Bayesian Improved Surname Geocoding (BISG). BISG is a method for combining geography- and surname-based information into a single proxy probability for race and ethnicity. While CDBA cannot itself recommend the use of BISG, the CFPB has studied the topic[7], and the Agency should be a resource for the CDFI Fund to consider whether and how to incorporate the use of BISG into CDFI Fund operations. For further discussion, please see our section on "Supporting Innovative and New Methodologies for LITPs and OTPs" later in this letter.

Broadly, these are challenges we can continue to work to overcome with time and with cooperation. As above, this work might take the form of a CDFI Fund-led series of workshops and seminars that allow for information sharing, discussion, and cooperation. The CDFI Fund should use this process to identify more flexible approaches to income verification (including self-identification), and to work to ensure that CDFI financing continues to be directed to several types of organizations and projects / facilities that serve predominantly low-income people but that do not obtain verifiable data on participants' incomes. The absence of pre-approved approaches to qualify lending based on these organizations' end-users may constrain a CDFI's ability to serve these customers, lest they risk their CDFI certification, which will result in less access to capital. Examples of these organizations include:

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

Because such organizations do not document client incomes of clients to verify service to low-income Target Populations (and practically may not be able to do so), they may be hard-pressed to obtain CDFI financing unless they are located in an eligible Investment Area.

The second part of the CDFI Fund's question asks whether approving a methodology should be contingent on meeting "standards for living wages or other quality job metrics." We urge the CDFI Fund to consider that the answer to this question is nuanced. We understand that "living wages" are an ideal aspiration for workers, their communities and the CDFIs that serve them. We also understand that many different, and changing definitions exist for what a "quality" job can or should be. It remains true at the

[7] CFPB, "Using publicly available information to proxy for unidentified race and ethnicity", Summer 2014; https://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf

same time that in a great many communities served by CDFIs, low wage jobs are vastly preferable to no job at all, and economic trends of disinvestment beyond the control of community lenders and local employers have left an increasing number of people with limited mobility and employment opportunities.

Low wage jobs do not exist in a vacuum – in order for an individual to hold a moderate wage job, a low wage job is often the first and essential step, or it may be a step taken in conjunction with other steps that are beyond the ability of a CDFI or employer to identify or appreciate. Because low wage jobs are not always an end in themselves, and the definition of "quality jobs" remains a topic of debate, to the extent a job satisfies the needs of an individual, individuals' choices should be respected.

c. *Current standards for identifying members of a Native American and Native Alaskan OTP include an assessment that an individual has ''maintained Tribal affiliation or community attachment.'' The CDFI Fund's proposed assessment methodologies state that a financing entity may assess a recipient's Tribal affiliation or community attachment via the collection of a government-issued or tribal government-issued photo identification. Are there other methods the CDFI Fund should deem entities can use to assess such status, and in particular an individual's ''community attachment'' to a Native population? What are those methods and describe them?*

We endorse comments submitted to the Office of Budget and Management on December 5, 2022 by the Native CDFI Network, particularly where those comments apply to the needs of Native communities and the CDFIs that serve them. Native CDFIs are vital institutions that are central to ensuring the future wellbeing of Native communities across the country. Native CDFIs must be provided great flexibility to remain responsive to the needs of their Target Markets, and members of Native Target Markets must not burdened in pursuit of CDFI services.

CDBA requests that proposed Target Market standards for identifying members of a Native American and Native Alaskan OTP *be carefully reconsidered before being enacted as proposed.* CDBA is concerned that the proposed standards hold Native clients of Native and non-Native CDFIs alike to a different, higher standard than other members of OTP qualifying population. While it is lawful and even required to collect personally identifiable information as part of a loan closing, requiring a borrower to verify personal eligibility for a CDFI loan appears to subject Native clients to *disparate treatment*. *Disparate treatment is a serious violation of Fair Lending Regulations under the Equal Credit Opportunity Act (ECOA). ECOA prohibits discrimination based on: Race or color, Religion, National origin, Sex, Marital status, Age, Source of income, or exercising of any right under the Consumer Credit Protection Act*. If these Native OTP standards are instituted as proposed, CDFI lenders will be forced to take steps to avoid placing their institutions at risk. Here is how the Federal Deposit Insurance Corporation (FDIC) defines Disparate Treatment:

> "Disparate treatment occurs *when a lender treats a credit applicant differently based on one of the prohibited bases*. It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself."[8] (Emphasis added)

[8] FDIC, "Consumer Compliance Examination Manual – March 2021"; www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/4/iv-1-1.pdf

The proposal does not require other cultural or ethnic groups to show proof of affiliation with their culture or ethnicity. Other OTP qualifying clients are allowed to self-report, and Native Americans deserve the same respect. In order to ensure fair access for Native communities to CDFI products and services, we respectfully request that the CDFI Fund adopt the same methodology for OTP-Native American as for OTP-African American and OTP-Hispanic.

I. General Target Market Verification Questions for Public Comment

a. Is there additional information that the CDFI Fund should consider related to Target Market assessment methodologies? If so, please describe.

Pre-Approved Proxy List

While we applaud the CDFI Fund's efforts to ease the burden of identifying Target Markets via a pre-approved Target Market Assessment List, we urge the CDFI Fund to delay implementation of this process until the CDFI Fund has more resources and staffing. We know that a proxy that is not included on the pre-approved list will need to be submitted for approval with the CDFI Fund. We are aware of certified CDFIs that have waited for two or more years for approval of changes to their Target Markets. With a wave of recertification applications on the horizon due to the revised certification application, the CDFI Fund must ensure that it has the resources to manage these requests in a way that a backlog of requests does not untenably delay the advancement of the sector.

Asian American and Pacific Islander (AAPI) Target Markets

CDBA respectfully requests that the CDFI Fund reconsider the current approach to AAPI populations. Unfortunately, the current CDFI certification application does not consider AAPIs an eligible Target Market population, and the reliance of this request for comment on a "pre-approved" list of methodologies reflects this. We believe that this does not recognize the particular economic hardships of AAPI communities that is linked to historic discrimination and disinvestment. As Renaissance Economic Development Corporation (Renaissance) has noted, poverty is a nationwide problem among AAPI populations, both for New American and multi-generational populations. In New York City alone, the AAPI population experienced a 20.8% poverty rate as of 2019, higher than the overall city rate of 17.9%.[9] At the same time, AAPI-owned businesses across the nation face challenges in accessing capital:

> "A 2019 report by the national advocacy organization National CAPACD, citing data from the SBA's Office of Advocacy, noted that 35% of AAPI-owned firms received less than the amount requested when they applied for a loan from a financial institution. For white-owned firms, this figure was just 25%."[10]

CDFIs should be encouraged to be part of the solution for underserved and low-income AAPI communities. AAPI communities are not monolithic. Sub-groups are as disparate as Japanese-Americans concentrated on the West Coast and Hmong-Americans in the upper Midwest. We believe there is a strong argument in favor of instituting an OTP-AAPI designation, and encouraging CDFIs to serve these underserved communities. We urge the CDFI Fund to engage with CDFIs currently serving AAPI

[9] Renaissance Economic Development Corporation, Letter to the CDFI Fund, December 5, 2022
[10] Ibid

communities within currently existing Target Markets to help identify how best to add AAPI populations as an eligible Target Population.

<u>*LITP Methodologies and Proxies*</u>

End Users and Proxies

In the current application, several proxies that are both common and serve as excellent standards are not included on the approved list. *We urge the CDFI Fund to include the following (non-comprehensive) proxies on the list, as these are well-known, documentation is available, and CDFIs should not have to go through the process for new approvals*[11]*:*

- Health care
    - Healthcare beneficiary data reported on bphc.hrsa.gov, when applicable, including without limitation the following patient data:
        - Race
        - Income
        - Medicaid and Medicare clients
        - Uninsured clients
        - Clients of state-sponsored, income-restricted insurance programs
        - Patients at or below 100% of poverty
        - Patients at or below 200% of poverty
- Housing
    - Low Income Housing Tax Credit financed properties for residents of affordable housing;
- Education
    - Department of education websites data on race and income

End User Threshold

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.

As noted above, many of these provides may not be able to verify the income level or racial or ethnic demographics of end users. Regarding income, for those that can verify the income level of end users, the threshold may make the loan uneconomic. For example, lending for the purpose of developing affordable housing often requires that multifamily housing include a mix of subsidized and market units. This requirement has foundations in policy *and* economics. For example, policy makers in many markets provide incentives to encourage the development of mixed income housing to ensure that certain benefits associated with higher income communities are accessible to members of lower income families. Often, these incentives are central to a development's economic viability. Developers will design projects to accommodate those local incentives, which may result in a market/subsidized unit

[11] The standards for qualification in the National School Lunch Program (NSLP), sometimes referred to as "Free and Reduced School Lunch" are included as a proxy in the Pre-Approved Target Market Assessment Methodologies List. However, NSLP was absent from the Proposed Certification Application. We ask the CDFI Fund to ensure that NSLP is consistently recognized as a proxy across program documents.

mix in excess of the CDFI Fund's proposed 50% threshold (e.g. 30% or 20% subsidized units). 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 low-income house at all.

Supporting Innovative and New Methodologies for LITPs and OTPs

Technology is radically changing how a large number of consumers access financial products and services. While studies show some customers still prefer to go to a branch or ATM for services, online banking, mobile banking, debit cards, and other media are rapidly gaining popularity. As such, long-term trends increasingly suggest that CDFI banks will likely be serving a mix of geographic areas and Target Populations.

In the past we have noted that some CDFIs are interested in establishing a LITP using low- and moderate-income block groups but remain challenged by the requirement to collect customer information to ensure they meet the "80% or less of median family income" standard. Related, the national conversation about racial equity has sparked renewed interest in finding new ways of ensuring communities of color have fair access to capital. Most CDFIs have a strong interest in maximizing service to such customers. A relatively small number of CDFI banks opt to certify based on OTPs, but, among those that do, technological innovation increasingly drives how they serve populations that are not strictly confined to discrete geographic areas.

As an example, both conventional and mission-driven banks are increasingly taking advantage of the ECOA exemption under the Special Purpose Credit Program (SPCP) to direct products to CDFI-qualifying Target Markets. Participants in the Treasury's Emergency Capital Investment Program (ECIP) benefit from a similar protection, and are motivated to expand beyond their discrete geographies. As we have previously urged, *we hope that the CDFI Fund engages in discussions with the CFPB and bank regulatory agencies to ensure that depository CDFIs are able to collect race and other demographic data without fear of negative reprisals from examiners.*

Unfortunately, outside of these specific exceptions for activities undertaken by depositories, ECOA imposes regulatory restrictions on collection of race and other demographic characteristics during the loan application process and this makes OTPs difficult to manage. Some banks have attempted to ask borrowers to "self-identify" by race or other characteristics post-loan closing. Yet, these CDFIs were discouraged when the CDFI Fund required the bank to "verify" the borrowers' self-identified demographic, which is an essentially impossible task. Such a request is insensitive to customers. *It is particularly problematic for communities of color that are too often disrespected due to their race — yet their self-identification is not taken as fact by the CDFI Fund. We strongly recommend the CDFI Fund cease this practice.*

There are numerous promising alternatives. These include allowing OTP-qualifying borrowers to self-identify post-closing, inviting practitioners to collaborate with the CDFI Fund (as discussed above) on identifying approaches to develop proxies for race and ethnicity based on publicly available information such as Bayesian Improved Surname Geocoding (BISG) and, allowing CDFIs to conduct periodic, third party administered customer surveys. Surveys for example, have been successfully used by several CDFI banks in support of FA applications. The CDFI Fund can encourage this by providing guidance on best-practices or even a framework to conduct these surveys safely and to an appropriate standard of statistical reliability.

CONCLUSION

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

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

Thank you for considering our recommendations.

Sincerely,

Jeannine Jacokes
Chief Executive Officer

Brian Blake
Chief Policy Director