Community Development Bankers Association
1201 15th Street NW, Suite 200 • Washington, D.C. 20005 • (202) 689-8935 • (202) 689-8938 (fax)

November 25, 2022

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

Mr. Jeff Merkowitz
Senior Advisor
Community Development Financial Institutions Fund
US Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: Notice and request for public comment, Minority Lending Institution Designation Criteria; Federal Register /Vol. 87, No. 144 / July 28, 2022

Dear Director Harris and Mr. Merkowitz:

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments on the Notice and request for public comment, Minority Lending Institution (MLI) Designation Criteria, published by the Community Development Financial Institutions Fund (CDFI Fund or the Fund) in the Federal Register on July 28, 2022. As stated, the CDFI Fund is seeking input on the implementation of the designation.

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

We appreciate the hard work of CDFI Fund staff to support the CDFI industry and the communities we serve. We especially applaud the CDFI Fund for considering provisions that address racial disparities in lending and narrowing the racial wealth gap. CDBA and its members work to be catalysts for change. The places and people we serve are often Minority communities historically starved of access to capital. We are committed to expanding access to capital and financial services in American communities that have faced the historic barrier of systemic racism. We hope that this initiative will encourage a wide variety of CDFIs to set new and higher standards for the provision of constructive, responsible financial products to underserved minority populations.

General Comments

General Principles

CDFI banks applauds the efforts of the CDFI Fund to ensure “high levels of service and accountability to Minority populations.” We support establishing a new, permanent MLI designation within the CDFI Fund to advance those goals. As this work progresses, we urge the CDFI Fund to ensure the following principles guide its work:

- *Incentives*: The MLI designation should encourage CDFIs to find new ways to pursue impactful lending to Minority populations and within Minority communities that contribute reducing the racial wealth gap. CDFIs that are already successful in this work should be inspired to apply for the designation, and to share their best practices as models for the industry. CDFIs not yet at the standards should view the designation as aspirational, and be encouraged to take steps to reach those standards.
- *Accessibility*: The MLI designation should be accessible for a wide variety of CDFIs, even as many will need to adjust their business practices to meet the standards. Standards should be set high, and clearly defined, but not be so remote or strict that they feel unattainable. Designation standards should not unduly or disproportionately disadvantage one type of CDFI in relation to others for reasons that are structural to the CDFI type. For example, regulated CDFIs are limited in their ability to collect individual demographic information in certain circumstances, such as non-mortgage consumer lending. However, this line of business may be precisely the line of business that might demonstrate the CDFI’s service in Minority communities. In this case, the CDFI Fund should help CDFIs identify paths to demonstrate legitimate activity. As above, the MLI designation should encourage the delivery of more products to Minority communities.
- *Simplicity and Clarity*: Designation standards should be easily explained and understood. Ongoing reporting should be seamlessly incorporated into annual CDFI certification reporting. While there should be several paths to the designation, a CDFI should be able to quickly assess what steps it must take to put itself on a path to success.
- *Community Outcomes*: To remain consistent with standards for CDFI certification, the MLI designation must focus on ensuring impactful outcomes for Minority communities and populations.

Providing New Tools

In addition to setting the standards for MLI designation, we believe there are additional ways the CDFI Fund could help CDFIs enhance their service in and to Minority Populations.

The CDFI Fund could expand the use of financial assistance dollars to support targeted outreach and community building efforts. In the early days of the CDFI Fund such activities were considered part of Development Services. In recent years, the CDFI Fund’s definition of Development Services has narrowed significantly. Today, Financial Assistance applicants can only receive monies to support Development Services if the service is <u>directly</u> tied to delivery of a <u>very specific</u> financial product. We strongly urge the CDFI Fund to reverse this trend and recognize that capacity building -- as well as building trust -- among any group of underserved customers can be a long term process that is not realistically always directly tied to a specific product.

CDBA urges the CDFI Fund to work with the Consumer Financial Protection Board (CFPB) and the depository institution regulatory agencies to allow regulated CDFIs more flexibility in doing targeted outreach to Minority groups. Specifically, we specifically urge the CDFI Fund to reach out to the CFBP to secure blanket Special Credit Purpose Program (SCPP) treatment for all CDFIs. As currently implemented, the Equal Credit Opportunity Act (ECOA) prevents regulated institutions from engaging in marketing and outreach efforts that target specific demographic groups. In theory, the Emergency Capital Investment Program (ECIP) provides greater flexibility for serving targeted groups. In reality, however, only a portion of regulated CDFIs were approved for ECIP and the bank and credit union regulators have taken no action to provide guidance to ECIP participants or examiners on how the exemption will be treated. Thus, leaving the participants unsure whether the regulators will allow collection of customer demographic or targeted outreach and marketing. If CDFIs have SPCP treatment, they will have greater flexibility and more tools to increase service to Minority Populations.

Responses to Questions from the Request for Public Comment

I. Definitions

<u>A. Majority-Minority Census Tracts</u>
Question 1. Are the proposed definitions of ''Minority'' and ''Majority-Minority Census Tracts'' appropriate for the purposes of designating an MLI?

CDBA supports the CDFI Fund's proposal to rely on the definitions and methodology established by the 1997 Office of Management and Budget (OMB) standards on race and ethnicity.

II. Designation Criteria

<u>A. CDFI Status</u>
General Comments

CDBA agrees that the primary qualification for the MLI designation should be CDFI certification.

<u>B. Financial Products Directed to Minorities and Majority-Minority Census Tracts</u>
General Comments

The CDFI Fund proposes to "seek evidence that an applicant has directed greater than 50% of both the number ***and*** dollar volume of its arm's-length, on-balance sheet Financial Products to Minorities (including minority-owned businesses) or Majority-Minority Census Tracts . . ."

CDBA supports setting meaningful benchmarks for delivery of credit and financial services to Minority populations and communities, but cautions that a more sophisticated approach may be more appropriate. As an overarching goal, we want to create incentives for every CDFI to seek to expand their services into Minority populations and communities. Yet, some regions or communities may have high poverty, but lower concentrations of communities of color than others. Likewise, the mix of products and services a CDFI provides can also influence market penetration into certain demographic groups.

We are concerned that the proposed "50% of both the number ***and*** dollar volume" may be too blunt a standard and may not reflect the variety of institutions that do an effective job in serving minority communities. For example, it establishes a higher bar for CDFIs serving rural communities to qualify than it does for others, and it does so to the detriment of Minority communities.

First, many regulated CDFIs meet the needs of their communities through the provision of both commercial and consumer products, although commercial loans are the primary product by dollar volume. Many CDFI banks focus their consumer activity on products that are responsive to the needs of low-and moderate-income (LMI) individuals via the provision of affordable, small dollar financial products. In one scenario, a CDFI bank may provide a high number of small dollar loans to Minority individuals, or within Minority communities within its CDFI target market, while a much smaller number of large-dollar commercial loans falls within CDFI census tracts that are not Majority-Minority.

We strongly urge the CDFI Fund to revise its proposal provision to read "greater than 50% of ***either*** the number ***or*** dollar volume of Financial Products to Minorities (including Minority-owned businesses) or Majority-Minority Census Tracts." MLI status should not exclude a CDFI that excels at providing services to Minority individuals, but provides financing for commercial borrowers (for example) outside of a Majority-Minority census tract.

We urge the CDFI Fund to recognize that, outside of special circumstances, regulated CDFIs are prohibited under the Equal Credit Opportunity Act (ECOA) from collecting borrower demographics. As noted above, an ECOA exemption exists for participants in Treasury's Emergency Capital Investment Program (ECIP), but not all CDFIs are ECIP recipients. Further, the federal regulators have not promulgated guidance on how the ECOA exemption will be treated. Similarly, while the Home Mortgage Disclosure Act (HMDA) requires the collection of demographic information, not all regulated CDFIs are HMDA reporters, and many do not even offer home mortgage loans. The final version of the CFPB's Rule 1071 will soon require collecting demographic information on small business. At his time, however, there is no clear evidence whether the CFPB's standards for collecting and reporting demographic information will align with HMDA. This leaves regulated CDFIs in a precarious position, as many will be effectively prohibited from demonstrating their track record serving Minority individuals. These lenders will relegated to focusing on geography, which is an imperfect measure, particularly in rural communities. We urge the CDFI to carefully consider these circumstances, and consider alternatives to ensure that all entities that are engaged in qualified lending, have the opportunity to demonstrate their success in serving Minority communities.

Question 1. Is a rolling 36-month period the appropriate length of time to assess an applicant's track record of serving Minorities or Majority-Minority Census Tracts for the purposes of designating a CDFI an MLI? Should the CDFI Fund instead require applicants to meet this requirement using some other time period, either upon initial designation or to maintain the designation? If yes, what is an appropriate time period?

CDBA supports the CDFI Fund's proposal that MLI service to Minorities or Majority-Minority Census Tracts be conducted on a rolling 36-month period for ongoing compliance. The standard for initial recognition, however, should be one year in order to encourage participation in the program. In this scenario, a "new" MLI that was designated based on one year's activities should be subject to a look back review after three years, and evaluated on trailing three years' activity going forward.

Question 2. The Act requires that an MLI must direct a majority of its financial products ''at minorities or majority-minority census tracts or equivalents.'' Should the CDFI Fund assess financial Products delivered to legal entities that are not owned or controlled by Minority individuals to finance projects such as affordable housing, child care centers, charter schools, or health centers that are not located within a Majority-Minority Census Tract but whose end beneficiaries (e.g., customers, residents, or employees) are members of a Minority population? If yes, how?

CDBA agrees with the CDFI Fund's proposal for assessing financial products similar to those described above. The Fund should strive to recognize when Minority populations are the end users that benefit from project financing. It will be important for the CDFI Fund to allow geographic proxies in these cases. For example, just as CDFI Fund Target Markets can be based on census tract income designations, the CDFI Fund should treat census tract racial and ethnic demographics the same.

We believe it will be important for the CDFI Fund to be flexible and consider exceptions. There are numerous scenarios that will appear, on the surface, to be marginal, or even not qualifying. In one example, a community facility located in a non-minority census tract in a large, dense city may have numerous programs targeting disadvantaged Minority communities. This could be for several legitimate reasons. One reason might be that it is a child care facility located in a commercial district that low-income and Minority individuals commute to, but don't reside in. It may also be due to the arbitrary nature of census tract boundaries, that the facility is located on the wrong side of a census tract delineation while still serving an adjacent Minority community. So, while a geographic proxy may not itself support a determination of MLI status, the location of the community facility should not *disqualify* the CDFI from taking extra steps to demonstrate that its financing has benefitted a Minority community. In these cases, the CDFI Fund should allow CDFIs an opportunity to demonstrate how a facility's end-users contribute to the financing qualifying for MLI status.

The CDFI Fund should also encourage CDFIs to work with partners providing services to develop a "good faith" estimate for the CDFI Fund's consideration on the demographic profile of a facilitates' end users. The CDFI Fund can also avail itself of publicly available information to establish whether it believes the "good faith" estimate reflects reality, and the Fund should use its discretion to make the final determination.

<u>C. Accountability</u>
General Comments

In Questions 1 through 8 of section C, the CDFI Fund asks respondents to consider a variety of options for CDFIs to establish Accountability to Minority populations. We propose to primarily address the scenario addressed in Question 4, namely:

- *Given the regulatory requirements for the governing board composition of regulated financial institutions, as well as the absence of governing boards for some privately held entities, should there also be an option for non-MDI regulated entities or privately held entities without a governing board to demonstrate accountability for the purposes of MLI designation? If yes, what standard should be used?*

It is vital that CDFI depositories be allowed to designate as an MLI based on the composition of their Advisory Boards. This parallels the Advisory Board-only provision for regulated CDFIs in the newly proposed CDFI Certification application. While there are already firmly established standards for regulated entities to certify as Minority Depository Institutions (MDIs), the MLI designation is plainly different, as it explicitly focuses on end beneficiaries.

First, CDBA unequivocally supports the *de facto* qualification of all CDFI-certified MDIs for MLI status. The track record of these institutions is historically established, they are essential contributors to the CDFI sector, and they are leaders in the provision of financial products in Minority communities.

We also believe the CDFI Fund must not arbitrarily exclude non-MDI CDFIs from MLI status. Non-MDI CDFI banks must have the opportunity to demonstrate their accountability to Minority populations apart from their Governing Boards.

To ensure this, CDBA strongly urges the CDFI Fund to set a *high-threshold Advisory Board-only option for regulated CDFIs* to demonstrate Minority or Minority-accountable representation. Setting this level at 66% would reflect a high level of accountability, while not unduly discouraging participation.

Question 1 asks whether a "Majority (greater than 50 percent) of a CDFI's Governing Board members (should) be required to be members of Minority populations to demonstrate accountability to Minority populations? Specifically, the CDFI Fund requests comments on whether it should set a standard higher than the 33 percent level proposed separately for Native CDFI designation and for general Target Market accountability as part of the CDFI Fund certification standards?" For Governing Board accountability, in combination with other criteria, the MLI standard should align with the existing 33% standard for Native CDFI certification. The "majority" standard would align with MDI certification. CDBA supports the de facto qualification of MDIs as MLIs, but strongly urges the CDFI Fund to ensure that non-MDI CDFIs also have paths to MLI status.

Questions 2 and 3 address alternative approaches to establishing accountability through Boards. CDBA supports the CDFI Fund's consideration of multiple options, where a lower threshold is set for Governing Board or Advisory Board accountability, as long as they contribute to accountability in combination with other criteria. Making more options available will do more to reflect the variety of the CDFI industry. *However, offering other options should not come at the expense of a high-threshold Advisory Board-only option for regulated CDFIs, such as that described above.*

Question 5 addresses the extent to which a CDFI's principals or executive staff should be allowed to demonstrate accountability. CDBA strongly urges the CDFI Fund to expand the types of individuals that can serve on a Board to demonstrate accountability. Assuming only the CEO or executive staff can demonstrate accountability is short sighted. In fact, often personnel deeper inside the institution have specialized expertise (i.e. credit counseling, lending) or experience working directly with community members that make them highly knowledgeable about the needs of the Minority community. CDBA urges the CDFI Fund to allow a wide range of personnel outside the executive suite to demonstrate accountability.

Question 6 asks whether CDFI ownership should be allowed to demonstrate accountability to Minority populations. We believe that accountability should include a definition that is parallel to the MDI definition (e.g. MDIs qualify de facto as MLIs), and therefore, we believe that CDFI ownership should be allowed to demonstrate accountability to Minority Populations.

Question 7 asks whether the CDFI Fund should allow the composition of a CDFI's loan committee to demonstrate accountability to Minority populations. A CDFI's loan committee should be allowed to contribute to accountability in combination with a Governing or Advisory Board.

Question 8 asks, if a CDFI "serves multiple Minority populations, for purposes of the MLI designation, should it be required to have Board or other representation reflective of each of the Minority populations it serves?" Many communities served by CDFIs are extraordinarily diverse and dynamic. We do not believe it would be practical or useful to codify such a requirement. It should be sufficient for the CDFI Fund to require MLIs to make a good faith effort to ensure the group of individuals establishing MLI accountability be broadly representative of the makeup of the Target Market Minority community.

Question 9 asks two separate questions. The first is whether "Native MDIs (should) automatically qualify as an accountability criterion for designation as a Native CDFI?" We appreciate the CDFI Fund's interest in this subject, and believe that it is an important question. However, we believe it is outside the scope of this comment letter and respectfully request that it be addressed separately, so that the question can be given the respect and consideration that it deserves.

The second part of Question 9 poses whether "status as a Native MDI automatically (should) qualify as an accountability criterion if the CDFI also serves other Minority populations?" Assuming that a Native MDI is already certified as a CDFI, we support the concept of Native MDI status counting as an accountability criterion if the CDFI also serves other Minority populations. In other words, we support an expansive, universal approach to serving Minority populations. MDI status should never be construed to limit an MDI's efforts to serve a multitude of underserved populations.

CONCLUSION

In conclusion, the membership of CDBA fully appreciates the thoughtful consideration of the CDFI Fund and its staff in continuously seeking to improve the effectiveness and reach of its programs. 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, Chief Policy Director at (646) 283-7929 or *blakeb@pcgloanfund.org*.

Thank you for considering our recommendations.

Sincerely,

Jeanine Jacokes
Chief Executive Officer

Brian Blake
Chief Policy Director