

November 5, 2020

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Program Manager  
Office of Certification, Compliance Monitoring and Evaluation  
Community Development Financial Institutions Fund,  
U.S. Department of the Treasury,  
1500 Pennsylvania Ave. NW  
Washington, DC 20220

**Re: Community Development Financial Institutions Program — Certification Application  
OMB Number 1559–0028**

Opportunity Finance Network (OFN) appreciates the opportunity to comment on the CDFI Fund's proposed CDFI certification application. OFN is a national network of more than 300 community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other under-resourced communities across America. Our membership has originated \$74 billion in financing in urban, rural and Native communities through 2018.<sup>1</sup>

We strongly support the CDFI Fund's diligence in protecting the integrity of CDFI certification. CDFI certification is a mission test that serves not only as an eligibility screen for CDFI Fund programs, but as a valuable credential with private, philanthropic and other public sector investors in CDFIs.

We support the Fund's commitment to keep certification standards high so that unsavory financial service providers in low-wealth communities are prevented from becoming certified CDFIs. CDFI certification is a privilege and the CDFI Fund must safeguard it to ensure those receiving the designation are truly community development focused. At the same time, the Fund must be cautious about imposing onerous, costly requirements and high barriers to entry that make the certification process so restrictive that worthy applicants are not able to obtain the status. If certification becomes so complex that existing CDFIs cannot navigate the changes and potential applicants are dissuaded from applying, it will not result in a process improvement or better outcomes for the communities CDFIs serve. Some aspects of the Fund's proposal are a step in the right direction, while others could be improved.

OFN members, in general, expressed support for the direction of the CDFI Fund's proposed changes to streamline the certification process to enable better evaluation of CDFI applicants' lending, coverage, and products. OFN is particularly pleased to see the CDFI Fund's efforts to automate processes and streamline the application process. The use of the CDFI Fund's Award Management Information System (AMIS) to auto-complete portions of the application and only present questions relevant to the Applicant will reduce some of the overall burden.

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<sup>1</sup>Opportunity Finance Network, "Inside the Membership: Statistical Highlights from OFN Membership: 2018", Published December 6, 2019. [https://ofn-drupal-pub.s3.amazonaws.com/s3fspublic/insidemembership\\_fy2018.pdf](https://ofn-drupal-pub.s3.amazonaws.com/s3fspublic/insidemembership_fy2018.pdf).



At the same time, OFN members have expressed serious concerns about the Fund implementing major changes to certification, reporting and compliance amid a major health and economic crisis. The COVID-19 pandemic has impacted CDFI capacity, leaving some organizations stretched thin and making tough choices about how to use limited resources, like whether to offer additional flexibility to their current borrowers, meet the growing demand for new lending and technical assistance, allocate additional funds to loan loss reserves, or to retain staff.

The impacts of COVID-19 make it even more difficult to make the major, upfront investments in new software or systems needed to accurately report and capture information the Fund may require, especially for smaller CDFIs. In particular, the new requirements for CDFIs that are not Financial Assistance awardees to complete and submit Transaction Level Reporting generated concern from OFN members that this might impose a significant new compliance burden.<sup>2</sup>

OFN offers the following comments on the Proposed Certification Application:

### ***Timeline for Implementation***

The changes proposed are significant and require an extended timeline for implementation. OFN recommends a grace period for currently certified CDFIs to come into compliance with the new certification criteria, a minimum of 18 months after the publication of the new, final application. The CDFI Fund should also provide thorough and ongoing training on the new application and reporting requirements.

### ***Quarterly CDFI Certification Application Cycle***

Moving to a quarterly application cycle would be an improvement as long as CDFIs applying for certification have certainty about how long the CDFI Fund will take to review the application and have information about the status of their applications once submitted. The CDFI Fund should also commit to making decisions about applications in the same quarter in which they are submitted. There also must be assurances that CDFIs that need to become certified to apply for Financial Assistance awards have the ability to do so, so any quarterly certification timetable must coincide with the annual CDFI Program application cycle.

### ***Primary Mission—Financial Products and Services***

OFN fully supports the CDFI Fund's role in ensuring that only qualified entities with an intentional community development strategy focused on "improving the social and/or economic conditions of underserved people and/or residents of economically distressed communities are eligible to be certified."

As the CDFI Coalition notes, with more than 1,100 CDFIs in all 50 states, simply evaluating an Applicant's board-approved organizational documents or a narrative statement will not always be sufficient to ensure that an organization is providing access to affordable, responsible capital. OFN

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<sup>2</sup> OFN is commenting on OMB 1559-0046 separately.



urges the CDFI Fund to use this reform of the certification process to set clear standards and guidelines and create broad authority to deny or decertify entities that do not meet the letter or spirit of the CDFI mission. Many of the proposed changes are a step in the right direction but OFN members identified several concerns with the new application related to Primary Mission:

- **Key terms not defined** - Many of the options assume incorrectly that there are standardized product and pricing definitions and standards in use within the CDFI or the financial services sector (i.e. “below market rate,” “lower than standard,” “nontraditional,” “less established,” “lower profitability,” “mainstream underwriting criteria” among others.) All the options force lenders to make blanket statements about products that may or may not be uniformly defined across products and borrowers.
- **Community development objectives list is too narrow** - Business development is listed as an output/outcome but should be considered its own community development objective. Many CDFIs have a mission to support communities through small business development and entrepreneurship. In addition, the new application does not include job creation as a positive community development objective. OFN recommends the Fund include the promotion of “quality jobs”, using recent publications by the Federal Reserve Bank of Boston to define quality jobs.<sup>3</sup> The CDFI Fund should also consider activities undertaken to close the racial wealth gap as a community development objective. As part of the CDFI Fund’s review and improvement of certification and reporting, OFN recommends the Fund collect information that will sharpen its ability to assess the performance of the Fund and CDFIs in serving communities of color.
- **Assumptions about CDFI business models** - Some of the questions in the new application presume that the business model for all CDFIs is to provide below market rate financing or other favorable terms to all borrowers in all circumstances. Access to credit, as well as the terms of the credit, must be considered. CDFIs offer different products and development services to reach their Target Markets. The rates and fees charged to borrowers are reflective of the borrower’s risk profile, market conditions, and the cost of capital to the CDFI. CDFIs also need to generate revenue to cover operating costs and continue to make loans. It is not always feasible to offer products at below market rate or to use other subordinate financing mechanisms. Further, loans made at market rates can still have a positive community development impact, especially for borrowers that cannot access mainstream finance OR borrowers that would potentially seek high-cost, predatory financing options.

### ***Responsible Financing Practices***

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<sup>3</sup> Jay Lindsay, “When a job isn’t enough: New Boston Fed initiative focuses on promoting ‘quality jobs’ and their impacts”, Federal Reserve Bank of Boston, Published October 29, 2018. Accessed October 31, 2020. <https://www.bostonfed.org/news-and-events/news/2018/quality-jobs-effort-announced.aspx>



- **Use of the Military Lending Act methodology:** As members of the Responsible Business Lending Coalition (RBLC),<sup>4</sup> OFN whole-heartedly agrees with the Fund that “Financial Products should be affordable and based upon a borrower's ability to repay and CDFIs should practice transparency, fair collections, and compliance with federal, state, and local laws and regulations.” The RBLC created the Small Business Borrowers Bill of Rights to provide guidelines for fair disclosure and transparent pricing in small business lending, some of which can be helpful in determining if an applicant is providing affordable, responsible financial products.<sup>5</sup>

In particular, collecting information on pricing of CDFI products is important to determine if a product is high cost or predatory. While using the Military Lending Act (MLA) standard to calculate annual percentage rate (APR) would allow for standardized calculation across the industry, some in our network expressed unfamiliarity with this method of calculation, while others noted they already have copious state and federal rules on how to calculate interest.

As states provide greater oversight to consumer lending, CDFIs are already making multiple interest rate calculations using different formulas: CDFIs engaged in small business lending in California are now required to make certain APR calculations as part of the implementation of Senate Bill 1235 which requires consumer-style disclosures for commercial financing. A pending small business lending disclosure bill in New York would use a different calculation of APR. A bill introduced in Congress by House Small Business Committee Chairwoman Nydia Velazquez (D-NY) would calculate APR using yet a different formula.

Requiring CDFIs to report APR using the MLA methodology adds another layer of complexity to the existing web of reporting requirements. CDFIs would have to choose to switch to the MLA APR calculation for their lending to ease the CDFI Fund compliance burden, which would require amending their financing disclosures as well as the methodology underpinning them. Or they would need to create an entirely separate system to make the MAPR calculation specifically for the CDFI Fund, which would also be costly and burdensome. The CDFI Fund should carefully consider if the additional compliance burden of reporting MAPR is warranted, or if there is an alternative way to allow CDFIs to report on their financing terms using their existing APR calculations.

- **CDFI industry standards for mortgage products** - OFN supports Self-Help's recommendation that for any home mortgages offered, the CDFI Fund review the products

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<sup>4</sup> The Responsible Business Lending Coalition is a network of non-profit and for-profit lenders, investors, and small business advocates that share a commitment to innovation in small business lending and serious concerns about the rise of irresponsible small business lending.

<sup>5</sup> The Borrowers' Bill of Rights includes the Right to Transparent Pricing and Terms, which calls for small business financing providers to clearly disclose seven key elements to businesses applying for credit: loan amount, and total amount provided after deducting fees or charges; annual percentage rate (APR) or estimated APR; payment amount and frequency, including the actual or estimated total payment amount per month if payment frequency is other than monthly; term or estimated term; all upfront and scheduled charges; collateral requirements, and any prepayment charges.



offered for protections consistent with the qualified mortgage (QM) statutory protections: (a) no negative amortization, interest-only payments, or balloon payments; (b) adjustable rate mortgages underwritten at the maximum rate in the first five years; (c) maximum term of 30 years; and 4) total points and fees generally not exceeding three percent of the loan amount. These product protections will help ensure responsible mortgage lending while allowing innovation in underwriting that may benefit communities CDFIs serve. It will also help prevent organizations from seeking CDFI certification status to circumvent QM rules and make high cost mortgages.

- **Disqualifying activities related to responsible financing practices** - Organizations that have any kind of fair lending violation or other related sanctions, a history of high cost lending and/or predatory practices, or recent unsatisfactory ratings on Community Reinvestment Act exams, should be considered ineligible for CDFI certification. While the CDFI Fund is not a regulatory agency, receiving certification status should require, at a minimum, adherence to certain responsible financing practices required by other federal regulators or laws. The CDFI Fund must protect the CDFI brand, the reputation of the industry, and a responsible steward of federal resources. It is appropriate to flag or prohibit behavior by entities that engage in activities that negatively impact the economic wellbeing of underserved communities.

The Fund could consider allowing organizations with one of the disqualifying practices listed above to appeal a decision denying certification and provide an explanation of why the CDFI applicant is not approved, giving entities the option to remedy any deficiencies and continue to pursue certification. In the case of an appeal or when an Applicant's community development focus is unclear, OFN agrees with the Community Development Bankers Association (CDBA) that the CDFI Fund's certification process should allow the agency to consider external sources of information about the products and practices of an entity seeking certification or re-certification.<sup>6</sup> As part of its certification process, the CDFI Fund should have the authority to request and review all consumer facing product information (i.e. websites, brochures, loan agreements, pricing and fee calculations) that are presented to prospective and actual customers.

### ***Primary Mission—Affiliates***

OFN supports the CDFI Fund's proposal to require all Applicants to demonstrate the mission focus of their parent and affiliate organizations to meet the primary mission test. This will help determine if an Applicant is truly serving low-income people and communities by providing affordable, responsible financial products and services, and prevent organizations that are not mission-driven from creating subsidiaries or affiliates that can be certified as CDFIs. At the same time, there are CDFIs doing meaningful, impactful community development work that might be adversely impacted by this new requirement. The Fund must be careful to not create too many loopholes that weaken

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<sup>6</sup> Such sources may include consumer complaints filed with the Consumer Financial Protection Bureau, a local Better Business Bureau, or state, local and Federal authorities, lawsuits or judgements against the lender, news media reports, and negative reports posted on social media.



the impact of this important change, but CDFIs have identified several cases where the Fund could consider exempting certain Affiliates from the Primary Mission test:

- **CDFI Affiliate profits are distributed to further community development mission** - The CDFI Fund could consider exempting Affiliates of nonprofit CDFIs which distribute their profits to the CDFI Certification Applicant, as long as they can meet all facets of the Primary Mission test. The CDFI Fund should exempt such Affiliates from the Primary Mission test since these entities further the capacity of the CDFI Certification applicant.
- **Affiliate activity comprises small portion of parent company's operations** - If the affiliate makes only one or two loans per year that doesn't comprise a significant amount of budget activity, that should not impact the ability for the applicant to obtain certification. OFN agrees with LISC's recommendation that the CDFI Fund exempt Affiliates which reflect less than 10 percent of their parent entity's annual Financial Product and/or Financial Service activity (as measured by volume of activity or commitment of staff resources) from the Primary Mission requirements.

**Impact on 7(a) lenders** - There were also questions about how this affiliate rule would impact CDFIs that participate in the Small Business Administration's 7(a) program through an affiliate entity, and if 7(a) loans – with the exception of 7(a) Community Advantage pilot program loans that have an explicit focus on underserved markets - would be considered to have a community development intent.

### ***Financing Entity***

Under the new certification guidelines, the CDFI Fund will assess whether the Applicant has closed an appropriate number and/or dollar volume of eligible Financial Product transactions during the timeframe under review. This change builds important flexibility into the process by allowing the Fund to "use its sole discretion in determining the appropriate level of activity with the provision of Financial Products." As stated earlier in the letter, OFN recommends SBA microlenders be considered to have a community development intent. However, for some of these microlenders, their loan portfolio might appear relatively small in comparison to the technical assistance or grants they might make as a percentage of budget/staff time. These entities could still be making significant number of loans, have positive community development impact and could be good candidates for certification. The flexibility built into the Financing Entity test could be an opportunity for more microlenders to become certified.

OFN also agrees with the CDFI Coalition that the Financing Entity standard should be flexible during economic downturns. Many CDFIs often scale their grant making activity during periods of crisis, which can cause an applicant to fail the Financing Entity test for one year even if they have always met it historically. Meeting the needs of underserved communities is more critical than ever during an economic downturn. The CDFI Fund should adopt policies to ensure CDFIs are not punished in these circumstances

The Financing Entity Section of the application also states that asset information provided should be based on the Applicant's information only and should not use a consolidated statement.



Questions in this section request Applicant's non-consolidated, current fiscal year-to-date financial statements. Some CDFIs only prepare a consolidated set of financial statements. The CDFI Fund should clarify how an Applicant should respond to this question if they only produce consolidated financial statements, and if organizations will be permitted to use these consolidated statements for the purposes of certification.

### ***Target Market***

OFN strongly supports the new certification policy that will remove the geographic boundaries on most Target Market designations. We are especially pleased to see that CDFIs that serve certain Targeted Populations will be able to count all qualifying activity toward their Target Market requirements, regardless of geographic location. This policy change gives CDFIs more flexibility to make investments based on market conditions and need and eliminates a lengthy approval process to update their Target Markets.

For CDFIs engaged in the Paycheck Protection Program and other COVID small business relief efforts, geographic restrictions on CDFI activity presented a difficult decision for many lenders: make PPP loans available or turn away businesses during a pandemic to preserve compliance with CDFI certification. For those CDFIs that made PPP loans to otherwise eligible borrowers, this change would ease the concern that they risk losing their CDFI certification by engaging in significant lending activity outside of their geographic Target Market.

OFN agrees with the Fund that this change will allow CDFIs to expand their geographic footprint and serve more communities, while also allowing greater use of technology and reducing administrative burden.

- **CDFIs Serving a Low-Income Targeted Population (LITP)** - In general, OFN supports the Fund's flexible approach to Target Market verification processes, and the publication of a list of preapproved processes. This list will provide certainty for lenders as the new certification process is implemented and will also reduce the administrative burden on the Fund to review a large volume of requests.

However, OFN is concerned that the Fund has not included this list of approved verification processes in this request for comment for input from the CDFI industry. If there will not be an opportunity to formally comment on the list, OFN urges the CDFI Fund to work with a cross-sector group of industry practitioners to develop the verification processes.

Additionally, the proposed application does not outline the process for requesting approval of a new Target Market verification process not already accepted by the CDFI Fund. The Fund should outline their timeframe for review and approval of a proposed process and clarify if there will be an opportunity to discuss or amend a proposed verification process if the Fund declines to accept the proposed process. Since this approval can impact an organization's business decisions, the Fund should not implement the new requirements before consulting with CDFIs and fully developing the process for getting other methodologies approved.



- **Small business lenders with Low Income Targeted Population (LITP) Target Markets** - Small business lenders in OFN's membership also expressed concern about using a verification methodology that qualifies deals as LITP based on benefits to End Users, not the borrower income. This method is allowed in the CDFI Fund regulations which states that "An entity may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve such members."<sup>7</sup> This can include affordable housing tenants, low-income users of community facilities, and low-income workers. However, the processes for verifying and documenting these End Users as has never been defined by the Fund.

In the absence of guidance from the CDFI Fund, CDFIs developed their own methodology and documentation for reaching End Users, especially for low-income workers. As an example, a CDFI might lend to a business owner that has income above 80 percent of the area median income but employs low-income workers. The CDFI uses a legally binding Employment and Training Agreement in which the borrower commits to a certain level of low-income hires, along with wages and benefits. These agreements are customized to the needs and capacity of the business. The business provides wage and household information to the CDFI at least annually so that the CDFI does not have to individually certify each low-income household for every loan. The organization has been recertified based on that methodology without explicit recognition from the Fund. There is concern about what happens if that CDFI's process is found to be invalid under the new guidance. OFN urges the CDFI Fund to remove this uncertainty by explicitly recognizing the validity of considering End Users to qualify for LITP.

- **Allowing community facilities lenders to qualify for LITP Target Market** - The Fund should allow CDFIs that finance community facilities, to be certified for a LITP Target Market if at least 25 percent of the facility's beneficiaries are low-income. Community facilities like child care centers that meet a requirement to set-aside classroom slots to serve children from families with low incomes should be able to designate a LITP TM the way that affordable housing-focused CDFIs can serve a LITP TM through a set-aside of housing units for low-income residents.
- **Removing flexibility from Target Market threshold** - OFN was also concerned that the certification application states "Applicants for CDFI Certification must meet the relevant Financial Product activity percentage threshold, without exception, in both the number and dollar amount of such activity - the CDFI Fund will discontinue its current practice of providing exceptions to the Target Market threshold requirement." There is no statutory nor regulatory requirement that states what percentage of a CDFI's activities must be devoted to Target Markets.<sup>8</sup> The Fund implemented the 60 percent threshold through guidance,

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<sup>7</sup> Electronic Code of Federal Regulations, Title 12: Banks and Banking [PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM Subpart B—Eligibility](https://ecfr.federalregister.gov/current/title-12/chapter-XVIII/part-1805/subpart-B), Accessed October 31, 2020. <https://ecfr.federalregister.gov/current/title-12/chapter-XVIII/part-1805/subpart-B>

<sup>8</sup> Memorandum to Annie Donovan, Director of the CDFI Fund from the CDFI Coalition re: Modernizing the CDFI Certification Process, May 6, 2016.





which builds critical flexibility into the certification process. Unforeseen events can impact a CDFI's ability to meet the 60 percent threshold, like a global pandemic forcing a short-term shift in a CDFI's lending activity. Organizations also pointed out that when a CDFI makes loans of very different sizes and in different quantities, for instance a CDFI whose core business is microlending but makes one or two larger business loans. Such a CDFI may fail to meet the 60 percent threshold for both units and dollar amount. The proposed change is too rigid and needs to retain flexibility for the Fund to consider truly exceptional circumstances and temporary imbalances in the Target Market threshold.

### ***Accountability***

OFN supports efforts to enhance accountability to Target Markets with new requirements for governing and advisory board participation. We also support the efforts to require greater representation from board members representing Other Targeted Populations (OTP) for CDFIs with OTP Target Markets. However, CDFIs in OFN's membership noted significant confusion about the practical implications of this requirement and raised several substantive questions about the proposal:

- **CDFI employees serving on other CDFI boards** - Can a CDFI board representative provide accountability as the representative of an organization that serves low income people or communities? One CDFI noted their board includes the Executive Director of another local CDFI. This individual is Native American, but the CDFI has a Low-Income Targeted Population Target Market, not an OTP-Native American Target Market. Under the current system, she would be considered as providing accountability for the LITP, because her organization serves low income people. However, the FAQs seem to suggest that her participation on the board could ONLY provide accountability for OTP-Native American or OTP-CDFI, neither of which is the organization's Target Market.
- **Local and regional Advisory Boards** - Are local and geographic specific Advisory Boards included in the Accountability test's standards for CDFIs serving regional, national, and geographic specific Target Markets, such as rural communities?

While the changes are designed to ensure CDFIs are meaningfully connected to the needs of the communities they serve, CDFIs will need time to bring their boards into compliance with the new accountability requirements. Most Board members have multiyear terms so the timing of the implementation requirement will be consequential. OFN recommends that currently certified CDFIs have a grace period for compliance so that as exiting board members term off the boards, they are replaced with board members to meet the accountability requirements.

### ***Development Services***

OFN urges the CDFI Fund to reconsider some of the changes proposed to the Development Services requirement. The new application will impose restrictions on the delivery of technical assistance, which is highly customized to each organization and does not lend itself well to arbitrary standards. It is particularly crucial that the CDFI Fund recognize the importance of



flexibility as the country navigates the COVID-19 pandemic and much of our collective activities move online.

We encourage the CDFI Fund to allow CDFIs the flexibility to offer Development Services in the form most appropriate to each customer. OFN echoes CDDBA's concern that 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 micro managing how CDFIs serve their customers; and (3) remove the flexibility needed to tailor services to each customer.

Below are some key concerns:

- **Elimination of one on one technical assistance** - Defining a Development Service as "a formal stand-alone training, counseling, or technical assistance service . . . that the entity offers separately and distinctly from its other products/services." The CDFI Fund proposes eliminating one-on-one technical assistance (TA), provided in conjunction with a product or other service as an eligible Development Service. Every customer is different, and CDFIs of all types are experts in recognizing and responding constructively to that individuality. Not all clients want or need, nor is it always feasible for CDFIs to offer structured, classroom-based TA. CDFIs should have flexibility in how they deliver TA based on the needs of their customers.
- **Prohibiting "Information presented in newsletters, flyers, or online."** - During this period of national emergency caused by the COVID-19 pandemic, OFN urges the CDFI Fund to 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 advisory board meetings.

## Conclusion

CDFI certification is one of the most critical components of the CDFI Fund's mission. We are deeply appreciative of the CDFI Fund's efforts to design a certification process that strengthen and updates the CDFI certification credential and provides meaningful insight into the size and scope of the CDFI industry. We look forward to continuing a dialogue with the CDFI Fund to ensure that these changes are implemented in a manner that upholds stringent standards while minimizing the burden and cost to CDFIs. Please do not hesitate to contact me if you have questions or concerns about these recommendations via email or phone at [dwilliams@ofn.org](mailto:dwilliams@ofn.org) or 202.868.6922.

Thank you,

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