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May 12, 2023

Pooja P. Patel  
CDFI Program and NACA Program Manager  
Community Development Financial Institutions Fund  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Re: Notice and Request for Comment on CDFI Program and NACA Program Financial Assistance and Technical Assistance Applications (Document No. 2023-04348 / OMB Control No. 1559-0021)

Dear Ms. Patel:

The Credit Union National Association (CUNA) represents America's credit unions and their more than 135 million members. On behalf of our members, we are writing regarding the Notice and Request for Public Comment issued by the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund or the Fund) regarding the CDFI Program and the Native American CDFI Assistance Program (NACA) Program Financial Assistance and Technical Assistance Applications.<sup>1</sup> The Notice and Request for Comment refers to the FY 2023-2025 CDFI Program and NACA Program Financial Assistance Application (FA Application), the FY 2023-2025 CDFI Program and NACA Program Technical Assistance Application (TA Application), and attendant Forms, Assurances, & Certifications (FAC), all of which the CDFI Fund has posted to its website for public review and comment.<sup>2</sup> Capitalized terms used but not defined in this comment letter have the applicable meaning ascribed to such terms in the FA Application, TA Application, and FAC, as applicable.

## Background

Treasury's CDFI Fund offers several programs, including the CDFI Program and NACA under its Native Initiatives. Under both the CDFI and NACA Programs, qualifying CDFI credit unions (CDCUs) can apply for financial assistance (FA) and technical assistance (TA) awards. These awards invest in and build the capacity of CDCUs to serve communities lacking adequate access to affordable financial products and services. Under both programs, awardees are selected through a competitive review process using the TA and FA Applications and additional FAC.

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<sup>1</sup> CDFI and NACA Program Paperwork Reduction Act (PRA)(CDFI and NACA Proposal), 88 Fed. Reg. 13510 (Mar. 3, 2023).

<sup>2</sup> *CDFI Fund Requests Public Comment on CDFI Program and NACA Program Applications*, (Mar. 3, 2023), available at <https://www.cdfifund.gov/news/509>.

In 2017, the CDFI Fund made extensive changes to the FA and TA applications which the Fund designed to ensure resources could reach additional existing and new CDFIs, as well as allow the CDFI Fund to increase affordable financial products and services in underserved communities across the country.<sup>3</sup> Given the significant increase in the number of CDFI-certified entities and the growing demand for CDFI Fund resources, the Fund is focused ensuring equitable growth, obtaining results-oriented data, and implementing meaningful and transparent compliance mandates.<sup>4</sup> The proposed changes are intended to work towards those policy goals.

## **Beneficiary Demographic Data**

CUNA recognizes the CDFI Fund's best intentions in updating the application and shares the Fund's commitment to ensuring that awards are used to serve the underserved. CUNA also acknowledges the guidance the Fund has provided that at this time the Fund's intention is to explore policy changes to strengthen the CDFI industry as a whole.

The CDFI Fund's desire for obtaining high-quality and results-oriented data is understandable, however, there continues to remain very real, very practical barriers to legally obtaining that data without causing harm to banking relationship between CDFI credit unions (CDCUs) and their membership. CUNA reiterates its previously expressed concerns regarding the legality and attendant risk of the obligation to collect, store, and report race, ethnicity, and household income data of its members.<sup>5</sup> Further, Regulation B does prohibit inquiring into a loan applicants marital status or whether the applicant's income derives from any public assistance program (including in connection with disability).<sup>6</sup> The requirement to obtain actual data points regarding these personal demographics may also violate state laws.

In further support of these concerns, particularly with regard to the sensitive topics of someone's racial or ethnic identity, CUNA would also direct the Fund to the recent discussion from the Consumer Financial Protection Bureau (CFPB) regarding race and ethnicity inquiries in connection with the Bureau's recently finalized Small Business Lending rule (Final Small Business Rule).<sup>7</sup> Having undergone an extensive research and rulemaking process, the Bureau eliminated the proposed requirements to collect ethnicity and race via visual observation or surname.<sup>8</sup> In discussing this decision, the Bureau cited commenter assertions that the requirement to assess ethnicity and race via visual observation or surname "would impair customer relationships, citing small business lending as more relationship-dependent than other forms of credit."<sup>9</sup> The Bureau also cited a comment stating "that because banks are more likely to have ongoing interactions with

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<sup>3</sup> CDFI Fund, Impact Blog, Enhancing CDFI Impact through the Financial Assistance and Technical Assistance Application Process (Mar. 27, 2023), *available at* <https://www.cdfifund.gov/impact/100>.

<sup>4</sup> *Id.*

<sup>5</sup> Comments of CUNA on CDFI Target Market Assessment Methodologies (TM Assessment Methodologies Comment) and Attached Legal Opinion (Dec. 19, 2022), *available at* <https://www.cuna.org/content/cuna/cuna-org/advocacy/letters---testimonies/letters-2022/cuna-files-comment-letter-with-the-cdfi-fund-regarding-target-ma.html>.

<sup>6</sup> 12 C.F.R. §§ 1002.2(z);

<sup>7</sup> CFPB, Small Business Lending under the Equal Credit Opportunity Act (Final Small Business Rule) (Mar. 30, 2023), *available at* [https://files.consumerfinance.gov/f/documents/cfpb\\_1071-final-rule.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-final-rule.pdf).

<sup>8</sup> Final Small Business Rule, p.472.

<sup>9</sup> *Id.* at 467.

a small business owner than someone seeking a mortgage, offense taken from visual observation or surname analysis would be more detrimental.”<sup>10</sup> Regarding agricultural lenders, the Bureau stated the requirement “would be negatively received by applicants” who “might perceive the notice as an indication that the lender intends to or must contradict the applicant’s wishes.”<sup>11</sup> In summarizing these concerns, the Bureau stated:

[T]he Bureau is mindful, consistent with the comments it received, that much of the lending to small businesses in smaller communities and in underserved and rural areas occurs through relationship banking that involves more frequent and more personal contact with applicants. The Bureau is also mindful of concerns raised by lenders that rely on in-person engagement that their customer relationships may be negatively impacted by customer discomfort with a visual observation and surname data collection requirement, particularly during initial implementation of this final rule. The Bureau also acknowledges the concerns expressed by commenters that bank employees may feel uncomfortable making ethnicity and race determinations on the basis of visual observation or surname.<sup>12</sup>

Recognizing the very real stakes for small business lenders, particularly those in smaller communities and underserved and rural areas, the Bureau declined to finalize a requirement to obtain ethnic and racial data via visual observation and surname.<sup>13</sup> Instead, the Bureau opted to require lenders to establish reasonable procedures to collect the information, to establish sample data collection forms with plain language explanations, and to launch its own public awareness campaign to educate small business owners in order to improve willingness to provide the information.<sup>14</sup>

These same concerns regarding the negative impact on the relationships with underserved and rural communities in connection with making inquiries to obtain actual race and ethnicity data is also true for CDFIs. CUNA understands that the CDFI Fund is continuing to review comments and that it is exploring how to obtain the data it desires to ensure the ultimate impact of the program. Nonetheless, the CDFI Fund’s proposed applications would appear to rely upon previously proposed requirements to obtain actual household income, race, and ethnicity data which remains unsupportable. CUNA continues to urge the CDFI Fund to accept proxies.

### **Assistance for Small and Emerging CDFIs**

The CDFI Fund’s proposal to align its own definition of a Small and Emerging CDFI Assistance (SECA) Applicants with that National Credit Union Administration (NCUA) threshold of \$100 million makes intuitive sense, however, it is likely too low.<sup>15</sup> SECA Applicants have a different set of requirements and evaluation parameters because of their small and/or emerging status. The NCUA’s small credit union threshold is determined under the Regulatory Flexibility Act (RFA)

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 472.

<sup>13</sup> *Id.* at 428.

<sup>14</sup> *Id.*

<sup>15</sup> CDFI and NACA Proposal at 13515.

and is specifically intended provide prospective relief in the form of special or more robust considerations of the credit union's capacity to handle compliance burden.<sup>16</sup> The goals of the threshold for SECA and the RFA are aligned. However, these credit unions should be understood as "very small". In combination, these credit unions represent less than 5 percent of all federally-insured credit union assets.<sup>17</sup> In comparison, all credit unions with less than \$500 million in assets represent less than 15 percent of all credit union assets.<sup>18</sup> A threshold defined as the bottom 15 percent of all credit unions by asset size may be more evergreen and account for market fluctuations, such as increased deposits seen during the pandemic.

As an alternative to the asset-based threshold, the CDFI Fund should treat all MDI credit unions as SECA Applicants. A significant number of MDI credit unions would appear to qualify as CDFIs, however, the actual number of credit unions that have been certified as both is relatively small. In order to improve MDI participation in the CDFI and NACA Programs, the Fund should allow all MDI credit unions to qualify for SECA.

The CDFI Fund also asks if it does retain the \$100 million threshold, whether it should be regularly updated to correspond with updates to NCUA's definition.<sup>19</sup> CUNA suggests that if the Fund retains the threshold, the CDFI Fund should merely cross-reference NCUA's regulatory provision regarding the Regulatory Flexibility Act thresholds.<sup>20</sup> This regulation contains the reference to the effective Interpretive Ruling and Policy Statement (IRPS) defining small credit union.<sup>21</sup> New IRPS updating this threshold are accompanied by technical changes to the regulation in order to keep this cross-reference accurate.<sup>22</sup> By defining this threshold through cross-reference, the CDFI Fund would not need to make regularly updated corresponding changes to the threshold when the NCUA increased it as a result of inflation.

### **Funding Levels for Larger CDFIs**

The CDFI Fund also inquires whether larger CDCUs should be limited on the total dollar amount or number of FA awards they receive within a timeframe and how larger CDCUs should be defined for credit unions.<sup>23</sup> The CDFI Fund's stated mission is to expand economic opportunity for underserved people and communities by supporting the growth and capacity of CDFIs. Limiting access and support for larger credit unions undercuts the Fund's mission to support the growth and capacity of CDFIs, which should not have an upper limit. Large CDCUs often are the most likely to have the balance sheets and sophistication to leverage CDFI funds to achieve a multiplier effect in their communities. Serving underserved communities is not only the right thing to do, it is a good business strategy and successful model for growth. The CDFI Fund should not disincentivize CDCU growth by placing an upper limitation on participation.

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<sup>16</sup> Promulgation of NCUA Rules and Regulations, 80 Fed. Reg. 11954 (Mar. 5, 2015).

<sup>17</sup> NCUA, Quarterly Credit Union Data Summary (2022 Q4), p. iii, *available at* <https://ncua.gov/files/publications/analysis/quarterly-data-summary-2022-Q4.pdf>.

<sup>18</sup> *Id.*

<sup>19</sup> CDFI and NACA Proposal at 13515.

<sup>20</sup> 12 C.F.R. §791.8(a).

<sup>21</sup> Interpretive Ruling and Policy Statement 15-1, *available at* <https://ncua.gov/files/publications/regulations/IRPS2015-1.pdf>.

<sup>22</sup> *See, e.g.*, Promulgation of NCUA Rules and Regulations at 11954.

<sup>23</sup> CDFI and NACA Proposal at 13515.

## Sponsoring Entities

The Fund also asks whether it should consider eliminating the Sponsoring Entity model and focus resources on building the capacity of emerging Native CDFIs in other ways.<sup>24</sup> CUNA suggests that in order to provide necessary support for emerging Native CDFIs, the Fund should undertake an public engagement with Native communities with the goal of designing a sandbox or pilot program that allows for flexible, innovative, and diverse approaches. The Fund should consider doing this in partnership with the NCUA's Office of Credit Union Resources and Expansion which oversees the chartering of de novo credit unions and the support of newly-chartered credit unions through the Community Development Revolving Loan Fund.

## Conclusion

Thank you for the opportunity to comment on the updated changes to the FA Application, TA Application and the FAC. If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 503-7184 or [esullivan@cuna.coop](mailto:esullivan@cuna.coop).

Sincerely,

A handwritten signature in black ink that reads "E. Sullivan". The signature is written in a cursive, flowing style.

Elizabeth M. Sullivan  
Senior Director of Advocacy & Counsel

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<sup>24</sup> *Id.*