



July 21, 2023

Marcia Sigal
Acting Director of the CDFI Fund
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Community Development Advisory Board Meeting - Recommended Changes to the CDFI Certification Application and Agreement

Dear Ms. Sigal:

As the leading advocacy organizations representing American's credit unions, we write today to share our technical recommendations on the Community Development Financial Institution (CDFI) Fund's Certification Application and Certification Agreement. The Credit Union National Association (CUNA) and the National Association of Federally-Insured Credit Unions (NAFCU) represent America's credit unions and their more than 135 million members.

CDFI-certified credit unions and cooperativas are key to achieving the mission of the CDFI movement. They work every day to expand economic opportunity for people and communities who have been excluded from the mainstream financial system. The 531 credit unions and cooperativas that are currently CDFI certified serve more than 20.5 million people through more than 2,800 branches, and CDFI credit unions lent more than \$192 billion in their communities last year. They effectively leverage CDFI resources, lending \$12 in their communities for every dollar in award funding. And their cooperative structure means that credit unions and cooperativas do well only when their members do well.

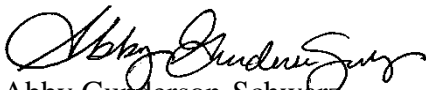
The undersigned organizations strongly support the CDFI Fund's goal of strengthening the CDFI Certification Application. It is critical that the Fund ensure that predatory lenders cannot access CDFI certification and Fund resources, and make sure that CDFI-certified institutions are meeting strong standards for responsible lending and effectively reaching historically redlined, rural, immigrant and other under-resourced communities. We appreciate the Fund's strategic pause on implementing the new application to thoroughly consider stakeholder feedback, and we encourage the Fund to implement a new application that reflects that input in a timely manner. As the Fund works to finalize the Certification Application, specific technical changes are required to ensure that regulated financial institutions, like CDFI credit unions, may continue to be certified as CDFIs and meet their communities' needs for safe and affordable credit and transaction accounts.

Multiple Congressional offices have requested specific, technical recommendations for changes to the proposed Certification Application and Agreement to ensure that credit union participation in the CDFI Program remains viable and vibrant. In order to produce quality recommendations that both honor the goal of the CDFI Fund to protect the reputation and mission of the program and to protect against the unnecessary exclusion of CDFI credit unions that are conducting important work in their communities, we consulted with a wide-range of CDFI-certified credit unions through one-on-one conversations and broader focus groups and workshops. The result of this research is the attached technical recommendations to the CDFI Certification Application (Attachment A) and CDFI Certification Agreement (Attachment B).

Congress and the CDFI Fund have provided invaluable support for CDFI credit unions and other CDFIs that served as financial first responders during the pandemic and beyond. The Rapid Response Program and Equitable Recovery Program have and will continue to allow CDFI credit unions to deepen their impact and create innovative new programs to support their members in building assets through saving, small business ownership, homeownership, and more. These programs are of critical importance to underserved communities across the country. We hope that the CDFI Fund will consider the attached recommendations as it moves forward in its finalization of the CDFI Certification Application.

We thank you for the opportunity to share our thoughts on the Fund's proposed application, and we are happy to provide additional information or resources if needed. If you have questions or require additional information related to our feedback, please do not hesitate to contact Elizabeth Sullivan at (202) 503-7184 or esullivan@cuna.coop or Brad Thaler at bthaler@nafcu.org or 703-200-8479.

Sincerely,



Abby Gunderson-Schwartz
Deputy Chief Advocacy Officer for
Congressional Affairs
CUNA



Brad Thaler
Vice President of Legislative Affairs
NAFCU

See Attachments

Cc:

The Honorable Patrick McHenry, Chairman, House Committee on Financial Services
The Honorable Maxine Waters, Ranking Member, House Committee on Financial Services
The Honorable Sherrod Brown, Chairman, Senate Banking Committee
The Honorable Tim Scott, Ranking Member, Senate Banking Committee
The Honorable Mike Crapo, Co-Chair, Senate Community Development Finance Caucus
The Honorable Mark Warner, Co-Chair, Senate Community Development Finance Caucus

ATTACHMENT A

RECOMMENDED CHANGES TO THE CDFI FUND'S PROPOSED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND CDFI CERTIFICATION APPLICATION

APPLICATION PROCESS

[...]

16) If approved, a CDFI Certification Agreement for approved Applications and a Certified CDFI Logo toolkit will be sent to the Applicant's Authorized Representative via email. An Authorized Representative must electronically review, sign and return the CDFI Certification Agreement within ~~ten ninety (190)~~ **ninety (90) business** days via AMIS. A copy of the executed Agreement will be available in their AMIS account for future reference. Note: Upon Certification, certain organizational information about the Applicant and its activities may be posted on the CDFI Fund's public website for the purpose of creating a public list and description of Certified CDFIs. A copy of the CDFI Certification Agreement can be found on the CDFI Fund website.

[...]

In addition to the above, all Applicants should note the following:

[...]

The CDFI Certification status cannot be transferred to another entity. Applicants that are acquired or merge with another entity while the Certification Application review is in progress ~~will not be reviewed, regardless of whether the Applicant is the surviving entity; the merger or acquisition is considered~~ must report the merger or acquisition as a material event. When reporting the material event, the CDFI should be required to indicate whether it will be the surviving entity, and, if so, whether it intends to obtain a CDFI Certification post-merger. If the CDFI indicates that intention, it will automatically be placed into a cure status as of the date of the merger and given 180-days to reapply for the certification. ~~In such cases, the surviving entity must submit a new Certification Application after the merger or acquisition is consummated.~~

[...]

PRIMARY MISSION

[...]

RESPONSIBLE FINANCING PRACTICES

[...]

Any Applicant that engages in the following practices is ineligible for CDFI Certification:

[...]

- Offers mortgage loan products that include negative amortization, ~~interest-only payments, or balloon payments~~; carry an original maximum term longer than 30 years; charge upfront points and fees in excess of the Qualified Mortgage limits; fail to verify the income of the borrower; or are underwritten at less than the maximum rate in the first five years;

[...]

[...]

~~Depository institution Applicants must also provide information on checking or share account features they offer, as well as information on any overdraft or nonsufficient funds (NSF) fees they charge. The CDFI Fund considers the safety and affordability of an Applicant’s Financial Services to be an important aspect of the Applicant’s commitment to a community development mission, and any Applicant offering products that lack reasonable protections or that charge excessive fees, inconsistent with regulatory guidance or a community development mission, may be determined ineligible for CDFI Certification. [If these questions are being asked for informational reasons, we recommend removing them from the Certification Application and instead collecting the data by surveying CDFIs. If the Fund does intend to use these questions to determine eligibility for certification, it should include guidance regarding its expectations and review guidelines in the instructions.]~~

PRIMARY MISSION - APPLICANT

Section	Recommended Changes to Question or Responses
PM13	<p>PM13.2 – Replace “Did any of the loan products in question have an annual default rate over five percent?” with “Did any of the loan products in question have an annual default rate over the greater of 5% and the net charge-off rate for the loan product category as reported in the most recent quarter’s aggregate Call Report data?” (Aggregate Financial Performance Report for CDFI credit unions).</p> <p>PM13.3 – Insert “Other than a statutory lien established by 12 USC 1757(11),” at the beginning of the question. Alternatively, add this exception to FN13.</p>
PM14	<p>PM14.2 – Replace “Did any of the loan products in question have an annual default rate over five percent?” with “Did any of the loan products in question have an annual default rate over the greater of 5% and the net charge-off rate for the loan product category as reported in the most recent quarter’s aggregate Call Report data?” (Aggregate Financial Performance Report for CDFI credit unions).</p> <p>PM14.3 – Insert “Other than a statutory lien established by 12 USC 1757(11),” at the beginning of the question. – Alternatively, add this exception to FN13.</p>

<p>PM16</p>	<p>PM16 – Add Footnote to “mortgage loan products” cross referencing the definition of “residential mortgage transaction” in 12 CFR 1026.2(a)(24).</p> <p>PM16.1 – Remove reference to interest only and balloon payments.</p> <ul style="list-style-type: none"> – ALTERNATIVELY, separate out negative amortization and add an item asking applicants to indicate whether they use IO or balloon payments and offer an open text to describe its policies in using these features and strategies employed when the balloon payments come due. The CDFI Fund should collect that information and use it in a collaborative, interagency study. The study should involve the CFPB and prudential regulators to understand asset and liability management considerations. This study would enable the CDFI Fund to better understand the beneficial use of these features, safety and soundness considerations, and design a better application question to identify abusive use of these features in the future. <p>PM16.4 – Insert “in accordance with 12 CFR Part 1026” before the question mark.</p>
<p>PM25</p>	<p>[If these questions are being asked for informational reasons, we recommend removing them from the Certification Application and instead collecting the data by surveying CDFIs. If the Fund does intend to use these questions to determine eligibility for certification, it should include guidance regarding its expectations and review guidelines in the instructions.]</p>
<p>PM26</p>	<p>[If these questions are being asked for informational reasons, we recommend removing them from the Certification Application and instead collecting the data by surveying CDFIs. If the Fund does intend to use these questions to determine eligibility for certification, it should include guidance regarding its expectations and review guidelines in the instructions.]</p>

FINANCING ENTITY

[...]

Certain Regulated Financial Institutions

The following entities are presumed to meet the CDFI Certification Financing Entity requirements and are exempt from completing this section of the Application, as long as their dates of incorporation, organization, or establishment occurred at least one full fiscal year prior to submission of a CDFI Certification Application:

- Depository Institution Holding Companies (DIHCs)
- Depository institutions with Federal Deposit Insurance Corporation (FDIC) insurance
- Credit Unions with National Credit Union Share Insurance Fund insurance
- State-Insured Credit Unions (includes state-regulated credit unions)

[...]

TARGET MARKET

[...]

Target Market Assessment Methodologies

[To address the significant legal, compliance, operational, and other risks associated with the Fund's proposed target market assessment methodologies for Low-Income Targeted Populations and Other Targeted Populations, the CDFI Fund should formally accept statistically rigorous, non-intrusive methodologies for assessing income and OTP status.]

DEVELOPMENT SERVICES

To be a Certified CDFI, the Applicant shall provide Development Services in conjunction with its Financial Products and Financial Services either directly, through an Affiliate, or through a contract with another provider.

A Development Service is ~~a formal, structured, stand-alone~~ training, counseling, or technical assistance service that promotes access to and/or success with an entity's Financial Products or Financial Services, and ~~can be offered that the entity offers~~ separately and distinctly from its other products/services or holistically incorporated into them.

CDFI Certification Applicants must:

- Offer access to at least one certified financial counselor to the Target Market population;
- Offer at least one Development Service;
- ~~Demonstrate that they maintain control over the content and delivery parameters of their Development Service(s);~~
- Clearly link the Development Service(s) provided by the Applicant to at least one of the Applicant's Financial Products or Financial Services; and
- Make at least one Development Service available on an ongoing basis at least four times per year;

Development Services should address subject matter that prepares consumers to access and be successful in using an entity's Financial Products (e.g., first-time homebuyer counseling for prospective mortgage borrowers) or Financial Services (e.g., offering budgetary coaching in connection with checking accounts).

When offering Development Services through an Affiliate or through a contract with another provider, the applicant must demonstrate that they maintain control over the content and delivery parameters of their Development Service(s). Publicly-available online training can be considered a Development Service only if the Applicant can demonstrate that it has a relationship with the developer of the training, either because the Applicant or its Affiliate is the developer, ~~an Affiliate is the developer, or the Applicant has a service agreement in place with the developer, or the Applicant performed due diligence on the pedagogical effectiveness of the training in its selection.~~

The CDFI Fund does not consider the following activities to be Development Services:

- Training, counseling, or technical assistance not clearly intended to prepare consumers to access and/or be successful with a Financial Product or Financial Service offered by the Applicant. Examples of such services include workforce development, ~~or parenting training/support groups, and training/counseling intended solely to enable consumers to access financing provided by other entities.~~
- The process of making referrals, whether it be to training, counseling, or technical assistance available to services provided at the discretion of other entities.
- Information presented in newsletters, flyers, or ~~generally posted in online banking platforms.~~
- ~~Workshops for children or conferences/workshops for broad audiences.~~
- Presentations made at one-off events (e.g. annual conferences, fairs), or at events held by other entities.
- Marketing events/activities.
- ~~Services provided at the will and discretion of other entities (e.g., publicly-available online training).~~
- ~~Unstructured conversations with consumers on Development Services subject matter.~~

Section	Recommended Changes to Question or Responses
All DS Questions	Align with the above.

ACCOUNTABILITY

To be a CDFI, an entity must maintain accountability to residents of its Investment Area or Targeted Population, through representation by individuals on its governing board and/or Advisory Board(s). Individual accountability to a Target Market may be demonstrated through any of the following means:

Investment Area (IA)	Low-Income Targeted Populations (LITP)	Other Targeted Population (OTP)
Residence in a qualified census tract	Status as a Low-Income individual	Status as a member of the Targeted Population
Status as an owner of a small business located in a qualified census tract(s) or owner of a small business that principally employs and/or principally	Status as a an executive staff, governing board, or advisory board member of a third party, mission-driven organization that primarily provides services to Low-Income people	Status as a an executive staff, governing board, or advisory board member of a Certified CDFI (OTP-CDFI only)

provides goods or services to residents of the IA		
Status as an elected official primarily representing residents of qualified census tracts [CDFI Fund should clarify whether this refers to government officials or not]		Status as an an executive staff, governing board, or advisory board member of a third party, mission-driven organization that primarily provides services to the Other Targeted Population (OTP—Persons with Disability only)
Status as an an executive staff, governing board, or advisory board member of a third party, mission-driven organization that primarily provides services to residents of a qualified census tract(s)		Status as a family member of a person with disability (OTP – Persons with Disability only)

[...]

Option 4: Advisory Board Only (~~DHC and IDI Applicants, and Applicants without a formal governing board only~~):

- At least one Advisory Board member is accountable to each proposed Target Market;
- At least 80% of the Advisory Board is accountable to the overall proposed Target Market(s);
- At least one governing board member or partner/owner of the Applicant entity has a seat on the Advisory Board; *and*
- The Applicant has adopted an organizational accountability policy.

Option 5: Credit Union Democratic Control by Target Markets (Credit Union Applicant Only):

- A majority of a credit union’s members are determined to be members of eligible CDFI Target Markets, using a CDFI Fund-approved Target Market assessment methodology; *and*
- The Applicant has adopted an organizational accountability policy.

[...]

FINANCIAL INTEREST POLICY

The CDFI Fund's financial interest policy for CDFI Certification Accountability is intended to prevent board members with certain types of financial interest in an organization **not subject to oversight by a prudential regulator** (either directly or via a family member) from being considered accountable to any Target Market component, as the financial interest may conflict with a board member's ability to effectively represent the interests of the Target Market. Governing Board and Advisory Board members who are principals (i.e., individuals owning or controlling at least 25% of an entity) or staff members of the Applicant organization **not subject to oversight by a prudential regulator** or its Subsidiaries or Affiliates, or whose family members are principals or staff members, cannot be used to demonstrate Target Market Accountability. A financial conflict of interest also includes board members who have

active loan products from the Applicant or that receive financial compensation for their board service above and beyond any reasonable cost reimbursement for travel or expenses incurred.

For purposes of the financial conflict policy, relevant family members include spouses; children (including step-, in-law, and adopted children); or other family members of the board member’s household (e.g., siblings (including step-, half, and in-law siblings; parents (including step- and in law parents); and grandparents related by blood or adoption).

ACCOUNTABILITY – GOVERNING AND/OR ADVISORY BOARD (IF APPLICABLE)

Section	Recommended Changes to Question or Responses
AC10 Financial Interest Policy	Insert “For applicants not subject to oversight by a prudential regulator,” at the beginning. Add “N/A” answer option for applicants who are subject to a prudential regulator.
AC11 Financial Compensation	Insert “For applicants not subject to oversight by a prudential regulator,” at the beginning. Add “N/A” answer option for applicants who are subject to a prudential regulator.
AC25 Accountable Based on Low-Income	Remove “Applicant verified the board member’s income” and insert “board member certified the qualification based on their income within the last 3 years.”

ATTACHMENT B

RECOMMENDED CHANGES TO THE CDFI FUND'S PROPOSED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND CDFI CERTIFICATION AGREEMENT

Effective as of [date of approved CDFI Certification], the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, has hereby certified the entity with Employer Identification Number [EIN] (hereafter, the CDFI) as a Community Development Financial Institution (CDFI) in accordance with regulations set forth at 12 C.F.R. 1805.201. All capitalized terms set forth herein are defined in 12 C.F.R. 1805.

[...]

[...]

[...]

- f. Accountability: The CDFI must maintain accountability to its Target Market via one of the following options:

[...]

- iv. Advisory board only ~~(DIHC and IDI applicants, and CDFIs without a formal governing board only):~~

- At least one advisory board member is accountable to each approved Target Market component;
- At least 80% of the advisory board is accountable to the overall approved Target Market;
- At least one governing board member or partner/owner of the CDFI sits on the advisory board; *and*
- The CDFI has adopted an organizational accountability policy.

v. **Credit Union Democratic Control by Target Markets**

- A majority of a credit union's members are determined to be members of eligible CDFI Target Markets, using a CDFI Fund-approved Target Market assessment methodology; *and*
- The Applicant has adopted an organizational accountability policy.

[...]

The CDFI Fund reserves the right, in its sole discretion and at any time, to make the determination that the CDFI meets or does not meet CDFI certification eligibility requirements **and place the CDFI into cure status. Upon placement into cure status, the CDFI will receive reasonable notice of noncompliance including the CDFI Fund's determination and its reasons. The CDFI will be permitted a reasonable opportunity to either present contrary factual evidence to the Fund regarding its**

determination or, except in the instance of fraud or intentional misrepresentation, a reasonable period of time to cure the noncompliance.

[...]

[...]

7. Annual reporting requirements. Throughout the term of this Agreement the CDFI must meet annual reporting requirements, to provide information that will assist the CDFI Fund to: (1) ascertain whether the CDFI continues to meet the CDFI certification requirements set forth in 12 C.F.R. 1805, CDFI Fund-issued CDFI certification guidance and/or this Agreement, including the criteria for certification, as shown in Section 5 above; and (2) assess the CDFI's annual financial and socio-economic performance.

Failure to file any CDFI certification compliance report or to provide CDFI certification compliance information requested by the CDFI Fund will result in termination of the CDFI certification, following the issuance of the notice of noncompliance and a reasonable opportunity to cure.

[...]

[...]

8. Records/audits and additional documentation.

[...]

- b. The CDFI shall maintain all CDFI certification-related records for a minimum of ~~10~~3 years after submission of the document(s) or record(s) to the CDFI Fund. The CDFI shall maintain documentation supporting the data reported to the CDFI Fund.
- c. ~~The~~ With reasonable prior notice, the CDFI Fund and the U.S. Department of the Treasury, and their representatives, shall have full and free access during reasonable business hours to the CDFI's offices and facilities and all books, documents, records, reports, and financial statements relevant to the certification provided hereunder. The CDFI shall permit any of these authorities to copy such documents as they deem appropriate, subject to the limitations of Federal and state law. The purposes of such inspections and/or audits will include, but not be limited to, ensuring that representations, warranties, covenants, and/or certifications provided by the CDFI are accurate. The CDFI Fund will, consistent with applicable law, including the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), maintain the confidentiality of all financial and other proprietary information disclosed to the CDFI Fund pursuant to this section.

[...]

10. Notice of noncompliance. The CDFI is responsible for maintaining compliance with all CDFI certification requirements set forth in 12 C.F.R. 1805, CDFI Fund-issued CDFI certification guidance and/or this Agreement, even if it has not received a written notice of noncompliance. The CDFI Fund will provide reasonable notice of noncompliance, including the reasons for noncompliance and a reasonable opportunity to present contrary factual evidence to the Fund

regarding its determinations. Except in the instance of fraud or intentional misrepresentation, the CDFI will have a reasonable opportunity to cure the noncompliance.

[...]

11. Termination of CDFI certification. The CDFI certification will be terminated if the CDFI Fund determines in its sole discretion that:

- a. there has been any fraud or **intentional** misrepresentation in connection with a CDFI certification application, a Target Market modification application, a required report or any other information provided to the CDFI Fund in connection with the CDFI certification;

[...]

- d. the CDFI failed to maintain compliance with the CDFI certification requirements as set forth in 12 C.F.R. 1805, CDFI Fund-issued CDFI certification guidance and/or this Agreement. The CDFI Fund reserves the right, in its sole discretion, to make the determination that the CDFI does not meet the CDFI certification requirements or the terms of this Agreement and, accordingly, terminate the CDFI certification. **Prior to termination, the CDFI Fund will place the CDFI into cure status. Upon placement into cure status, the CDFI will receive reasonable notice of noncompliance, including the reasons for noncompliance and a reasonable opportunity to present contrary factual evidence to the Fund regarding its determinations. Except in the instance of fraud or intentional misrepresentation, the CDFI will have a reasonable opportunity to cure the noncompliance; and/or**

[...]

[...]

13. Data usage. The CDFI agrees and understands that any organizational information or data collected in AMIS or otherwise provided to the CDFI Fund (e.g. CDFI Certification Application, Target Market modification request, ACR, TLR, periodic requests for additional information, etc.) may be posted on the CDFI Fund's public website, shared with other federal agencies or accessed via a Freedom of Information Act (FOIA) request. **Personally-identifiable information pertaining to individuals and businesses, or transaction level information, will not be made publicly available without redaction or other privacy protections to ensure the confidentiality and security of the CDFI's customers.**

[...]