



August 29, 2024

Via Electronic Submission

Ms. Pravina Raghavan
Director
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

RE: Revised CDFI Certification Application, December 7, 2023

Dear Director Raghavan:

On behalf of the members of the undersigned national banking trades representing the full range of United States domestic banks and thrifts, we respectfully submit the enclosed comments on the Revised CDFI Certification Application, released December 7, 2023.¹ Collectively, our CDFI bank members work to create economic opportunity in low- and moderate (LMI) income, high poverty, high unemployment communities.

CDFI banks comprise a significant portion of the CDFI industry as a whole. Today there are 196 CDFI certified banks and 160 certified bank holding companies. Thirty-two (32) of the 196 CDFI banks (16%) are also minority depository institutions (MDIs). In 2023, the Federal Reserve Bank of New York reported that CDFI banks held \$117.7 billion of assets, roughly 26% of the then-estimated assets for the entire CDFI industry. Since then (as of Q1 2024), CDFI bank assets have grown approximately 5.25% to \$124 billion dollars. In Q1 2024, the median asset size of a CDFI bank was \$360 million dollars (average size

¹ The Community Development Bankers Association (CDBA) is the national trade association of Federal and State chartered banks, thrifts, and their holding companies that are certified by the CDFI Fund for demonstrating a primary mission of serving low- and moderate-income communities. CDBA leads the growth and development of the CDFI bank sector, building healthy institutions with the capacity to promote access to capital and financial services in distressed and underserved communities.

The American Bankers Association (ABA) is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$18.8 trillion in deposits and extend \$12.5 trillion in loans.

The Independent Community Bankers of America® (ICBA) has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at www.icba.org.

\$631 million), with the smallest bank just \$26 million in assets, and the largest \$7.9 billion in assets, well under the Federal Reserve's asset-based threshold to be defined as a "community" bank.

The coming decade will see exceptional transformation as CDFI banks continue to leverage the capital from approximately \$6.2 billion in equity investments via the U.S. Treasury's Emergency Capital Investment Program (ECIP). Investments have also been made and are anticipated from private sources, as well as partnerships encouraged by provisions in the October 2023 joint agency Community Reinvestment Act (CRA) final rule, and the Environmental Protection Agency (EPA) Greenhouse Gas Reduction Fund (GGRF). CDFI banks are ready to deploy these funds, incorporating them into their operations in what is one of the federal government's best market-based strategies for leveraging federal investments and private dollars to restore economic vitality.

On behalf of our members and the communities they serve, we respectfully urge the CDFI Fund to carefully consider our recommendations.

General Comments on the Certification Process

We echo sentiments expressed in a June 10 letter submitted by national CDFI trades. Our organizations fully support the recommendations advanced in that letter. We submit these additional comments to provide context and analyses on issues of particular importance to the certification of CDFI banks.

We are grateful for the CDFI Fund's efforts to modernize the certification application and associated reporting materials. The application that was released in December of 2023 included many important, positive changes from the November 2022 draft.

We applaud the June 20, 2024 revision of the submission deadlines for recertification applications. Under this policy, certified CDFIs will retain their status until their recertification application submission due date, and remain eligible to apply for all CDFI programs. This change will provide some space for CDFIs to address outstanding questions while continuing their demanding work. Importantly, pending guidance from the CDFI Fund, we also expect the policy to address concerns arising from the mismatch that occurs when new standards are applied retroactively to prior period activities. *We are very grateful for the CDFI's attention to this issue.*

We remain concerned, however, about a number of proposals that have been carried through to the final application and guidance.

CDFI bank priorities include:

1. Instituting a cure or hold harmless period.
2. Target Market:
 - Reinstating Non-Metro County Eligibility for Target Market Customized Investment Areas (CIAs).
 - Retracting the 85% Qualified Census Tract requirement for Customized Investment Areas (CIAs) or consider alternative strategies that do not pose an undue burden on rural CDFIs.
 - Allowing CDFIs to designate a primary business location for business borrowers that may have multiple locations for the purpose of determining its location within an Investment Area.

3. **Primary Mission – Responsible Financing Practices Standards:** Several of the proposed “required”, “prohibited” and “discouraged” practices require additional clarification -- or should be amended to better fit the work of CDFIs, including treatment of interest-only loan structures for construction, bridge or certain HELOC loans, overdraft and nonsufficient funds fees, balloon mortgages, applicability of the Military Annual Percentage Rate, and small business disclosures.

These issues discussed below will make it difficult for many mission-focused CDFI banks to achieve recertification. Other provisions will cause these institutions to be less flexible and responsive to the needs of the historically under served and economically disadvantaged, low- and moderate-income (LMI) communities they already serve.

- 1. Cure or Hold Harmless Period: We strongly urge the CDFI Fund to clearly institute a cure or hold harmless period for recertification for institutions that need to make amendments to their operations and business strategies as a result of changes to the certification requirements.**

While the revised deadlines for recertification provide immediate relief for CDFIs by extending the application deadline, it is not clear from the written language how the changes address the fundamental challenge articulated by CDFI trades in their June 10, 2024 letter. This challenge arises from the mismatch that occurs when new standards are applied retroactively to prior period activities. Encouragingly, we understand from CDFI Fund staff that the revised deadlines are intended to accommodate the joint CDFI trades’ June 10 request for a “cure” or “hold harmless period.” This would allow CDFIs to make necessary changes to maintain their certification. Specifically, CDFI staff have stated that CDFIs applying for recertification with a Fiscal Year End (FYE) of December 31, 2024, will have a Transaction Level Report deadline of June 30, 2025, and will use their FY 2024 data in that submission.

While CDFIs are known for providing flexible products and services to their customers, their operational realities do not make them correspondingly nimble when asked to change their business model – particularly regulated CDFIs. Given the December 2023 release of the final rule, even the nimblest of CDFIs have struggled to adjust operations to meet the new standards in the first six (6) months of 2024.

We recommend that the CDFI Fund explicitly provide extra time (a cure or hold harmless period) to address challenges. In the case of recertification applications submitted in 2024 or 2025, if a CDFI fails to qualify based on issues that are due to changes in certification standards since the publication of the most recent application and guidance, we believe that entity should have a path to remain certified, *pending the submission of an application that shows compliance in the following FY with the new standards.*

An example of the need for this accommodation is the vast, *temporary*, nationwide reduction in the number of qualified tracts in the wake of the 2020 census. This reduction is focused on areas where CDFI census tract eligibility is driven primarily or exclusively by poverty rates. Whereas 31% of the census tracts in the US met the eligibility criteria of at least 20% poverty rate in 2015, only 23% of tracts met the same criteria in 2020.

We believe this significant reduction in poverty-based eligibility is likely due to the *temporary* impact of COVID stimulus programs in 2020. The 2020 US Census was conducted between April and December 2020 during the same period of time millions of low-income households became recipients of temporary stimulus support. As documented by the Center of Budget and Policy Priorities:

“In 2020 and 2021, strengthened by pandemic relief measures, economic security programs reduced poverty by all-time highs of 63 percent and 67 percent, respectively. Put another way, in 2021 the number of people below the poverty line was 67 percent smaller after counting economic security programs than before counting them.”²

“In 2020 and 2021, economic security programs reduced the poverty rate by 16.1 and 16.0 percentage points, respectively, surpassing the prior record of 13.0 percentage points in 2009. In addition, economic security programs kept record numbers of people above the poverty line in 2020 and 2021: 53 million in each year, far exceeding the previous high of 40 million in 2009.”³

As the vast majority of stimulus programs have ended, experts believe poverty rates will return to historic levels. Yet, the data used to qualify census tracts under ECIP uses the 2020 census results. Today, many CDFIs across the nation seeking to submit recertification applications find themselves struggling to maintain certification based on geography. While Census Bureau officials develop interim periodic estimates with the American Community Survey, the data release typically lags several years. Greater flexibility will allow the data anomalies to return to more accurate levels.

Without a cure period that focuses on aligning the new standards with an appropriate period for compliance, the recertification process will hold CDFIs to an inconsistent standard, and continue to risk decertifying effective and impactful CDFIs.

2. Target Market Test Amendments

A. We strongly urge the CDFI Fund to Reinstate Non-Metro County Eligibility In the Low-Income Calculator

The CDFI Fund has expressed concern that a CDFI might count all activities within an eligible non-Metro county as “Target Market” activities, while in practice limiting service to census tracts that are upper-income, and have low poverty and unemployment. However, we believe this concern has led the CDFI Fund to make changes that conflict with the CDFI Fund’s authorizing statute, Federal regulations, and the operating model of CDFI banks. Specifically, we respectfully urge the CDFI Fund to review the design and function of the “Low-Income Calculator” established for organizations to assess whether geographies or borrowers qualify as Low-Income. First, according to the document “Pre-Approved Target Market Assessment Methodologies December 2023,”⁴ non-Metro counties no longer are considered as units for CDFI Investment Areas (IAs). Based on the configuration of the calculator, the CDFI Fund appears to be defining “low-income” by individual census tracts versus the historical and industry practice of metropolitan and nonmetropolitan “areas.” We strongly encourage the CDFI Fund to revise this change.

As the Community Development Bankers Association wrote to the Fund on December 5, 2022:

² Center on Budget and Policy Priorities, “Expiration of Pandemic Relief Led to Record Increases in Poverty and Child Poverty in 2022”, June 10, 2024, www.cbpp.org/research/poverty-and-inequality/expiration-of-pandemic-relief-led-to-record-increases-in-poverty

³ *ibid*

⁴ CDFI Fund, Pre-Approved Target Market Assessment Methodologies_December2023_Final, Page 20

Part of the problem lies in the fact that census tract data may not accurately portray economic distress. Census tract qualification is based on data from a distinct point in time that is only updated every five years. Further, most CDFI banks rely on branches to conduct their business. Counties in rural areas are very large and . . . it is not feasible for regulated institutions, which traditionally provide a full array of loan and deposit services to the entire community, to pick and choose between individual census tracts. Further, far more than in metropolitan areas, activities that benefit one part of a non-Metro county benefit the whole. For example, a small business loan to a grocery store in a non-Metro area has an impact across the whole county because the county's population is too small to support many grocery stores.

The current CDFI regulations put non-Metro counties on equal footing with the census tract as a unit of Investment Areas (IA) eligibility. This is appropriate and should remain part of the new certification application. Many other Federal agencies (i.e. USDA, HUD, and banking regulatory agencies) explicitly recognize that the economic and social metrics of rural markets can be skewed by lack of population density. For example, the Department of Housing and Urban Development (HUD) annually calculates income eligibility thresholds for a variety of its programs. It documents those thresholds for each geography throughout the country⁵ and *uses either the metropolitan area median (for urban areas) or the county median (for non-Metropolitan areas).*

The CDFI Fund's authorizing statute and regulations explicitly recognize that rural markets are different than urban markets. Specifically, in 12 USC 4702⁶ (part of the Riegle Community Development Act of 1994), "low-income" is defined as "an income, adjusted for family size, of not more than—

- (A) for metropolitan areas, 80 percent of the area median income; and
- (B) for nonmetropolitan areas, the greater of—
 - (i) 80 percent of the area median income; or
 - (ii) 80 percent of the statewide nonmetropolitan area median income."

This definition is re-stated in the Code of Federal Regulations at 12 CFR 1805.201(b)(3)(ii)(B), *and also repeated in the CDFI Certification Application Guidance the Fund created in January 2024.*

In short, there is no suggestion in the CDFI Fund's authorizing statute that census tracts should be the exclusive units of measurement for CDFI certification, or that the inclusion of non-Metro counties can or should be optional. If the change of policy for non-Metros is not rescinded, the CDFI Fund's standards will disproportionately disfavor rural CDFIs. In a sample of 22 rural CDFI banks struggling to recertify, 40% would have qualified for recertification if their lending in qualified non-Metro counties was counted as eligible Investment Area lending.

We therefore request that the Fund reinstate non-Metro counties as a qualifying unit in the certification process. This would keep the Fund's application consistent with its authorizing statute and the precedent of recognizing the differences in urban and rural markets that the CDFI Fund has employed or decades.

⁵ HUD Office of Policy Development and Research, www.huduser.gov/portal/datasets/il.html#2023_query

⁶ 12 U.S. Code § 4702 – Definitions, www.law.cornell.edu/uscode/text/12/4702

B. We strongly urge the CDFI Fund to retract the 85% Qualified Census Tract requirement for Customized Investment Areas (CIAs) or consider alternative strategies that do not pose an unfair burden on rural CDFIs.

We understand that the CDFI Fund aims to ensure that CDFIs serving certification-eligible non-Metro counties do not direct the majority of their activities to areas lacking in economic distress. In response, the 2023 certification application includes a requirement that after October 1, 2026, 85% of activity in a CIA be directed to qualifying census tracts, before any activity in non-qualifying census tracts may be counted.

Unfortunately, the new 85% standard for lending activity within qualifying census tracts makes it virtually impossible for many CDFIs to rely on CIA activity for their Target Market calculations from year to year. If implemented as written, the 85% threshold will force CDFI banks to direct their activity in ways that do not reflect the reality of serving low-income communities in rural markets. This will force many well-qualified, active and mission-aligned CDFI banks to lose certification.

CDFI banks must balance their CDFI mission with their branch-based business model and regulatory requirements, all while ensuring responsiveness to market demand. They often operate in areas with limited economic activity, which leads to a low volume of loans. Business realities may create conflicts when CIA qualifying activity is narrowly focused on census tract, while economic distress is not consistent across a census tract and is not bound by census tract delineations. Lending can be directed to low-income portions of non-qualified tracts that are contiguous with qualified tracts, or central business districts where county-wide service providers support large, sparsely populated, distressed areas. Lending nearby or at a distance from, but not within, a qualified census tract may be just as beneficial to that tract (i.e. funding of grocery stores, health care facilities). While no map will ever capture the entire nuance required to perfectly reflect a CDFI's lending, CIAs are an important tool for rural CDFIs to approach a representative standard of service to their communities. Not every loan a CDFI originates or customer they serve will (or should be expected to) meet the geographic Target Market qualifications. The additional 85% threshold removes any flexibility for rural banks to economically benefit their communities. Ideally, all lending and investing within a CIA should count toward Target Market lending. We urge the CDFI Fund to rescind the 85% threshold.

Alternative Strategies:

If the CDFI Fund will not rescind the threshold, other adjustments can ameliorate the negative effect on rural communities.

The first, and simplest, is to make permanent the proposed transitional 75% threshold that currently applies through October 1, 2026.

Second, the CDFI Fund should adjust the configuration of the “qualifying-to- non-qualifying” census tract ratio. The ratio of activity should be considered not as a floor of activity that must be maintained within qualified tracts, but as a cap that should not be crossed in non-qualified tracts. In this case, we recommend that the hypothetical cap be set at 25%, proportional with our recommendation to lower the proposed threshold. We welcome the opportunity to explore the practical effects of these alternatives in greater detail at the CDFI Fund's convenience

Third, a further option borrows a principle that is in practice within the Bank Enterprise Award (BEA) Program. This option would allow banks to structure CIAs that include geographic units comprised of a combination of otherwise non-qualified census tracts that are adjacent to qualifying tracts, as long as the combined unit is in a non-Metro county, and the averaged demographics of the tracts meet a prescribed threshold.

This proposal draws on the precedent for inclusion of “partially qualified” census tracts in determining BEA eligibility. In this new proposal, if a non-Metro census tract is not initially Investment Area-eligible *on its own*, but is adjacent to a qualified tract, then the combined tracts may be included together as a qualifying unit under an alternative relying on two prongs:

- (1) The census tracts are located in an Investment Area eligible non-Metro county, *and*
- (2) Together, they satisfy a specified level of economic distress.

By way of background, BEA Distressed Communities must meet several eligibility criteria.⁷ These include:

- (1) A poverty rate of at least 30%, *and*
- (2) An unemployment rate of at least 1.5 times the national rate.

Importantly, this is a “both/and” requirement. In this scenario, *all* eligibility criteria must be satisfied in order for the geographic area to be considered a “distressed community.” In terms of geographic units, Census tracts that meet all the criteria (poverty and unemployment rate) are designated as BEA Distressed Communities.

The CDFI Fund, however, also allows banks to include “partially qualified” census tracts in their identification of distressed Communities. The BEA criteria for “partial” qualification of a tract reflects a modest relaxation of the standards for a census tract to be “distressed.” A tract will be considered “partially qualified” for BEA purposes if it meets:

- (1) A lesser poverty threshold of at least 20%.

Importantly, these partially qualified *census tracts will be deemed to qualify as part of a distressed community only if, when combined with one or more immediately contiguous tracts, the combined area meets all of the eligibility criteria. Not all tracts are permitted to be combined with contiguous tracts for eligibility purposes; rather, only “partially qualified” tracts may become eligible based on contiguity.* Our proposal draws on this concept of combining adjacent tracts that together meet a qualifying threshold. This partial qualification concept ensures that census tracts whose distress does not rise to heightened levels, as envisioned by the BEA Program, are still excluded for the purposes of certification.

In sum, if the CDFI Fund insists on a threshold for qualified census tract activity, we urge the Fund to include an additional methodology for CDFIs to meet the threshold that allows for census tracts to be combined as units in a way that meets a high standard, but recognizes the geographic realities of rural economies.

⁷ 12 US Code, § 1806.401(c)(2) - Community eligibility and designation, www.law.cornell.edu/cfr/text/12/1806.401

We believe that adopting this precedent of combining census tracts into units to meet the threshold of qualified CIA lending would align with the CDFI Fund's goal of ensuring that CDFI certification focuses on distressed geographies. It would also lower the risk of rural CDFIs (of all types) being unfairly disadvantaged during the certification process.

C. We strongly urge the CDFI Fund to allow CDFIs to designate a primary business location for business borrowers that may have multiple locations for the purpose of determining its location within an Investment Area

In the Pre-Approved Target Market Assessment Methodologies, CDFI banks serving geographic Investment Areas (IAs) will be required to "determine" the percentage dispersion of individual and business locations within the Investment Area. Taking this approach to business locations is impractical and will be highly burdensome for CDFIs engaged in small business lending. In fact, it will hold many CDFIs (regulated and nonregulated) to an impossible standard.

For example, many CDFI banks originate thousands of business loans annually. It is not part of the loan origination process to collect, record and geocode every "business location," which could include tens, and possibly hundreds of locations, as this information is not related to the underwriting of the loan. Further, "business location" is not one of the listed Pre-Approved Assessment Methodologies for Investment Areas (Listed options include "Residence" and "Project/Service"), making it unclear which census tracts CDFIs should report if the "business locations" are in multiple tracts within the Investment Area. This points to a disconnect in how this Methodology is implemented.

To resolve this, we recommend that "Primary Business Location" be added as a Pre-Approved Assessment Methodology, and that Applicants be allowed to designate a *primary* address for each non-real estate business loan at the time of origination that will then be used for *all* CDFI-related purposes. This will protect the CDFI program from Applicants choosing an address that qualifies for each program, but recognizes the limitations of CDFI banks' business processes and systems.

3. Primary Mission Test – Responsible Financing Practices Standards

The new application introduces responsible financing requirements that include "required," "prohibited" and "discouraged" practices. Several of these practices need clarification -- or should be amended to better fit the work of CDFIs.

A. Interest Only Loans: We strongly urge the CDFI Fund to reconsider certain "ineligible" practices for loans with interest only provisions under the Responsible Financing Practices standards

We urge the CDFI Fund to reconsider some of the "bright line" practices related to lending under the Primary Mission test. Practices prohibited in the new application include interest-only payment provisions with respect to: (1) construction and bridge loans; and (2) Home Equity Lines of Credit (HELOCs) secured by non-subordinate (first position) liens with terms longer than 12 months.

First, we strongly recommend that all construction and bridge loans be exempt from the general prohibition against interest-only provisions. Interest-only loans are an industry standard for these

products because properties or projects do not generate revenue during construction or other interim project phases.

Second, in the case of HELOCs, there are circumstances where interest-only provisions are applied responsibly in consumer lending, such as when a borrower owns a property “free and clear” and seeks access to liquidity. If the CDFI Fund wishes to screen for harmful or predatory loans, it would be more effective to assign these provisions a narrative section where CDFIs may explain how the product benefits customers and supports legitimate market need.

Third, we ask the CDFI Fund to clarify how the interest-only standard applies to consumer versus commercial loans. Uncertainty arises because regulated CDFIs are required to track and report loans to their regulators based on the loan *collateral* rather than the *use of proceeds or the borrower entity* (see bank and credit union “Call reports”⁸ as an example). It is therefore possible for a loan the CDFI Fund considers a “covered mortgage loan product” for the purposes of ineligible consumer lending practices, to be tracked as a “commercial” loan for other purposes. Any solution should be aligned with current regulatory practices due to the expense and impracticality of setting up additional tracking.

B. We strongly urge the CDFI Fund to provide additional clarity on “Practices Requiring Further Explanation.”

The CDFI Fund leads its evaluation of “Practices Requiring Further Explanation”⁹ with reference to standards for CDFI eligibility. Unfortunately, the application does not define these standards. Whatever the intentions of the CDFI Fund, the absence of a defined standard creates uncertainty and confusion. Specifically, CDFIs must provide an:

“Acceptable explanation of how (listed) practices have a community development purpose consistent with the principles described in this section (of the application). . .”

The application provides no explanation or example of what constitutes an “acceptable explanation.” Unfortunately, the application couples this unclear standard with a definite consequence. In the absence of an acceptable explanation, the application states “an Applicant may also be determined to be ineligible for CDFI Certification . . .” To be clear, the application provides no guidance on the standards for an “acceptable explanation,” but leaves entities responsible for meeting an unknown standard with severe consequences. We urge the CDFI Fund to clearly outline examples and/or define the criteria as to what an “acceptable explanation” should address.

i. Overdraft and Nonsufficient Funds Fees

The Primary Mission section on Overdraft and Nonsufficient Funds introduces substantial uncertainty and confusion. We strongly urge the CDFI Fund to clarify its intentions for this section, beginning with its standards for overdraft and nonsufficient funds fees charged by depository CDFIs.

⁸ FDIC, “Current Quarter Call Report Forms, Instructions, and Related Materials,” www.fdic.gov/resources/bankers/call-reports/index.html, and NCUA, “Call Report Forms and Instructions Archive,” www.ncua.gov/analysis/credit-union-corporate-call-report-data/call-report-forms-instructions-archive

⁹ CDFI Application, December 2023, “Practices Requiring Further Explanation,” p. 42

First, in its introduction to the topic of “Practices Requiring Further Explanation,” the application refers to:

“excessive overdraft or nonsufficient funds (NSF) fees or . . . practices that are related to these fees that are harmful.”

Unfortunately, the CDFI Fund does not define here what level of fees are considered “excessive,” or what, if any, outside authority it will consider in making its judgment. However the application later points to standards in Questions PM 26 (overdraft) and PM 27 (nonsufficient funds fees (NFF)) that can be addressed in the form of a narrative, as well as picklists of features associated with overdraft and NSF policies. In summary, *potentially* disqualifying practices are found in the following questions:

- Questions PM 26.2 and PM 27.1 lead CDFI banks to infer that any overdraft or NSF fee that “exceeds the amount of the item being cleared” puts the bank at risk of losing its eligibility.
- PM 27.4 suggests that any example of charging “more than once for an NSF,” even if an item is re-presented, puts the bank at risk.
- Questions PM 26.4 and PM 27.5 suggest that charging a customer for overdraft or NSF more than once in a rolling 12-month period also put the bank at risk.

While the CDFI Fund does not present these as “bright lines,” applicants cannot tell what standards they should address in their narratives. For example, how would the CDFI Fund view a properly disclosed overdraft fee of \$10.00 if the overdraft amount is \$5.00? If a fee exceeds the overdraft, is there a level of margin the CDFI Fund would consider acceptable? If a charge exceeds the “six occasion” threshold but the cost of those charges is low compared to other market alternatives -- such as payday lenders -- how should the bank demonstrate its community development mission?

Picklists in questions PM 26.5 and PM 27.6 cause further confusion as they provide what appear to be examples of bank practices that the CDFI Fund would use to inform its evaluation. In practice, CDFI banks can point to multiple examples of such “features” in their overdraft or NSF policies. Features on the picklist identified by CDFI banks include: “Consumer’s checking account linked to another account for overdraft protection,” “No transfer fees on overdraft transfers from savings or from a credit account,” “Balance-related alerts offered,” or “Access to real-time balance information.”

It is unclear how answering these picklist questions will inform the CDFI Fund’s evaluation. Do the “right” answers on the picklists mitigate “wrong” answers to the narrative sections? Are some account features on the lists considered more favorably than others? Likewise, is there a numeric threshold or minimum quality of features that a CDFI should have in place for these questions to yield a certain result?

We strongly urge the CDFI Fund to provide guidance to clarify how banks should address these questions. If the CDFI Fund does not intend to disqualify an institution that exceeds the “six occasion” threshold and instead seeks an explanation as to how the CDFI helps customers that repeatedly incur overdraft or NSF fees, it should clearly articulate this in its written instructions. While there is legitimate discussion about the appropriate level and frequency of overdraft and NSF fees, the application is not clear on what may -- or may not -- be considered responsible. In the absence of this, the uncertainty makes it difficult for depository CDFIs to understand how to complete these questions.

ii. Balloon Mortgage Fees

We urge the CDFI Fund to more clearly define acceptable practices related to balloon mortgages. For example, it is not clear under which, if any, circumstances mortgages with balloon payments will be disfavored if certain fees (such as appraisal fees) are charged, or if the CDFI does not limit application and origination fees when the mortgage is renewed and additional principal is advanced.

iii. Military Annual Percentage Rate (vs) Standard Annual Percentage Rate (APR)

We strongly urge the CDFI Fund to allow regulated CDFIs to use the widely accepted Truth in Lending Act (TILA) standards for calculating APRs. In the new application, the CDFI Fund requires all applicants to use the methodology prescribed in the Military Lending Act (referred to as the Military Annual Percentage Rate (MAPR)), to determine the highest allowable APR for any of an Applicant's consumer loan products, regardless of covered borrower status. Despite clarifications that the CDFI Fund will require MAPR attestations only at the application stage and not in loan-level reporting, some portions of the CDFI industry remain deeply concerned about this requirement. MAPR remains non-standard for regulated CDFIs and applying MAPR can be operationally unworkable.

iv. Small Business Disclosures

We strongly urge the CDFI Fund to refrain from requiring small business lending disclosures in the absence of a standard approved by the Federal financial regulatory agencies.

Currently there is no regulatory standard for small business lending disclosures. In the case of regulated CDFIs, we believe that the CDFI Fund should defer to the Federal financial regulatory agencies in defining any such disclosures. In place of requiring disclosures, we recommend the CDFI Fund adopt an alternative blanket Small Business Protection Attestation. Such an attestation should be subject to public comment. The CDFI Fund should also grant itself authority to deny or revoke certifications for those violating the letter or spirit of the Attestation.

4. Revise Policy Regarding Use of CIMS

We strongly urge the CDFI Fund to accept any industry-standard geocoding service to determine the census tract eligibility of addresses used for CDFI-certification or annual reporting purposes.

We are concerned that the CDFI Fund expects regulated CDFIs to use the CDFI Information Mapping System (CIMS) for all geocoding. The Pre-Approved Assessment Methodologies specifically state "using CIMS" in the Pre-Approved Assessment Methodologies is necessary to determine whether a residence or project/service is in an IA eligible tract.

We are deeply concerned that CIMS has proven an inadequate tool for depository CDFIs that are lending at scale. Specifically, CIMS is easily overwhelmed (sometimes failing to process entirely) when bulk geocoding or when many entities use it at the same time. Banks are among the CDFIs who are high-volume lenders and challenged CIMS' lack of technological capacity.

Today there are many high quality commercial geocoding services that are more efficient and accurate than CIMS. Importantly, many commercial geocoding services that can interface with automation software that CDFIs use. CIMS cannot interface with other software; which forces humans to manually

upload reports; thus resulting in wasted hours and a higher risk of manual error as loan reports have to be broken up and reassembled.

As a solution, we strongly urge the CDFI Fund to accept any industry-standard geocoding service as the tool used to determine the census tract eligibility for certification or program reporting purposes. Of course, if the address is actually entered into CIMS as part of a program, the CIMS decision would be final, but where the Applicant can provide the census tract rather than the address, any industry-standard geocoding service should be permissible for determining that census tract.

Conclusion

We thank you for the opportunity to comment and look forward to continuing to work with you on these important matters. If you have questions, please contact Jeannine Jacokes, Chief Executive Officer, Community Development Bankers Association, at 202-689-8935 ext. 222 or jacokesj@pcgloanfund.org; or Brian Blake, Chief Public Policy Officer, 202-689-8935 ext. 225 or blakeb@pcgloanfund.org.

Sincerely,

Community Development Bankers Association
www.cdbanks.org

American Bankers Association
www.aba.com

Independent Community Bankers of America
www.icba.org