NATIONAL ASSOCIATION FOR LATINO COMMUNITY ASSET BUILDERS

November 5, 2020

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

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

The National Association for Latino Community Asset Builders, NALCAB, is pleased to provide the following comments on the CDFI Fund's Request for Information on CDFI Certification. NALCAB is the hub of a national network of asset building community development organizations including more than 40 certified CDFIs. Members of the NALCAB Network invest in their communities by building affordable housing, addressing gentrification, supporting small business growth, and providing financial counseling on issues such as credit building and homeownership. Many of the people served by the NALCAB Network are low- to moderate-income individuals who are immigrants, or the children of immigrants.

We urge the Fund to maintain strong certification standards that ensure that certified CDFIs are truly focused on producing a positive social and economic impact for populations that have been traditionally underserved by our nation's financial services system. This can be achieved without unnecessarily complex and onerous re certification requirements. Further, an effective certification process must create a realistic "on ramp" for emerging mission lenders that are seeking certification for the first time.

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Is the information that will be collected by the revised application necessary and appropriate for the CDFI Fund to consider for the purpose of CDFI certification?

NALCAB encourages the CDFI Fund to continue with its efforts to automate processes and streamline the application process. This may require smaller CDFIs to invest in new software or technology and the CDFI fund should even more explicitly match its Technical Assistance resources with CDFIs and mission lenders seeking certification to support them in meeting the requirements of any new certification system. NALCAB is concerned that the new requirements for CDFIs that are not Financial Assistance awardees to complete and submit Transaction Level Reporting represents a significant new compliance burden without providing any resources.

What is a reasonable grace period for currently certified CDFIs to come into compliance with the new certification criteria?

The phase in period for a new certification process should be 24 months. CDFI Fund should establish and actively utilize flexibility for smaller or newer CDFIs and those that do not receive resources from the Fund to ensure any new burdens are reasonably phased in. The CDFI Fund

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should also provide training on the new application and reporting requirements.

Primary Mission—Financial Products and Services:

Are the questions in the revised application appropriate to determine an entity's community development intent?

In general, the CDFI Fund should define principles or key objectives more specific than the mission statement to guide its determinations about an entity's community development intent. Given the diversity and innovation of activities undertaken by CDFIs, any attempt to list all potential objectives or activities will inevitably be inadequate. The Fund does need flexibility to make determinations beyond a specific list, and the utilization of that discretion should be clearly anchored in a set of principles. For example, the more a mission lender serves low income populations, the more flexibility the Fund should show with respect to any other criteria.

Many of the options listed in the proposed application (i.e. "below market rate," "lower than standard," "nontraditional," "less established," "lower profitability," "mainstream underwriting criteria") need to be better defined or the Fund needs to ensure that interpretations are made by more than a single reviewer – which would certainly lead to inconsistency.
Further, the list of community development objectives list is too narrow. Specifically, small business development should be a community development objective. Closing the racial wealth gap, creating quality jobs and providing access to capital in persistent poverty communities should be community development objectives.

Some of the questions in the new application assume that CDFI's business model is primarily defined or identifiable based on rates and fees. Access to capital is often far more important than cost of capital, as long as there are clear definitions of abusive rates and fees (for example at least a 36% rate cap on small business and consumer lending). The CDFI Fund should take great care not to assume that all CDFIs should always provide "below market rate" or "lower cost" capital when the real issue is that their customers do not have any non-abusive options for accessing capital. Overemphasis on pricing and fees is a mistake, except when defining abusive practices.

Are there other practices related to the provision of Financial Products and/or Financial Services that should be considered indicators of an entity's community development intent?

NALCAB strongly agrees with Opportunity Finance Network when they have asserted that the CDFI Fund should consider cross-agency efforts to certify certain mission lenders like SBA Community Advantage and Microlenders as well as Low-Income Designated Credit Unions. Certification should not be automatic, but some aspects of the certification could be met like allowing SBA microlenders and Community Advantage lenders be assumed to meet the Primary Mission test.

Should any of the questions in the application related to responsible financing practices be used as a basis to automatically disqualify an Applicant from eligibility for CDFI Certification, or are there alternative criteria that should be met or used in such a manner?

If there are practices that should be considered either disqualifying or a prerequisite for CDFI Certification, should there be exceptions for any entities that engage or fail to engage, respectively, in such practices and, if so, under what circumstances?

CDFI certification status should require adherence to certain responsible financing practices. It is appropriate to prohibit behavior by entities that engage in activities that negatively impact underserved communities. This includes payday and auto title lending, merchant cash advance and abusive overdraft fees. Any lending with "all in" annual percentage rates in excess of 36% should be viewed by the CDFI Fund as disqualifying of an applicant or existing CDFI.

Consumer complaints filed with the Consumer Financial Protection Bureau and judgements against the lender should be taken into account. In the case of CDFI certified banks, this should be correlated with their Community Reinvestment Act rating and that of any parent company.

CDFIs providing services to, or partnering with, businesses or organizations that deliver to the community abusive financial, housing, or other practice, should not qualify for certification.

Are there any other practices related to the responsible provision of Financial Products, especially those related to mortgage or other real estate lending, and to equity investments, for which either the presence or absence of which should be considered for purposes of CDFI Certification?

The Responsible Business Lending Coalition's Small Business Borrowers Bill of Rights provides helpful 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. With regard to interest rates, the CDFI Fund should establish a standard (36% "all in" APR, for example) and require CDFI's to certify their compliance, rather than collecting detailed pricing data, which may frequently change based on the balance of mission and financial return in any given project or deal.

Primary Mission—Affiliates

Are there circumstances that the CDFI Fund should consider as an exception to this rule? NALCAB supports the CDFI Fund's proposal to apply this standard to all CDFI types and require applicants to demonstrate the mission focus of their parent and affiliate organizations to meet the primary mission test.

Financing Entity

The current "predominance of assets" test should remain unchanged. The CDFI Fund's proposal to change this is insufficiently transparent.

Target Market

NALCAB supports removing geographic boundaries on most Target Market designations.

Removing Flexibility from Target Market Threshold

The following statement is concerning, "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." The Fund should always reserve the ability to exercise some level of flexibility to address exceptional circumstances and market fluctuations due to factors like an unforeseen global pandemic. Using a rolling three-year average would help to ensure one-time fluctuations are not used to unreasonably disqualify an otherwise strongly mission driven organization.

Accountability

Accountability to OTP Target Markets should be established with two tests. First, using a rolling three-year average, a CDFI should show it actually invests 60% of its loans by volume and dollar amount in the other targeted population. Second, the CDFI's board should include at least 50% representation from individuals who self-identify as from the other targeted population OR the CDFI's board should include at least 25% representation from individuals who self-identify as from the other targeted population and the CDFI's senior leadership (as defined by the CDFI itself) should include at least 50% representation from individuals who self-identify as from the other targeted population.

NALCAB supports providing greater flexibility on the geography of board members.

Sincerely,

Noel Poyo
Executive Director