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November 5, 2020

Community Development Financial Institutions Fund
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Comments on the Proposed CDFI Certification Application, the Annual Certification and Data Collection Report, and the Certification Transaction Level Report

Dear Sir or Madame:

The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members. On behalf of our members, I am writing in response to the Community Development Financial Institution (CDFI) Fund' (the Fund) notice and request for public comment on the CDFI Certification Application.¹ This CDFI Fund also issued a contemporaneous notice and request for public comment concerning the Annual Certification and Data Collection Report Form (ACR) and the Certification Transaction Level Report (CTLR).²

Background

CDFIs are specialized financial institutions that work in markets that are underserved by traditional financial institutions. These entities, including many CDFI certified credit unions, are charged with supplying low-income, financially distressed communities with banking services and offering individuals the tools needed to become self-sufficient stakeholders in their own future. A financial institution seeking to become CDFI-certified and gain access to financial assistance from the CDFI Fund must complete the CDFI Certification Application.

The CDFI Fund recently proposed potential revisions to the CDFI Certification Application as part of its ongoing review of policies and procedures. This review is intended to ensure the program continues to meet certain statutory and regulatory requirements, is responsive to the evolving nature of the CDFI industry and protects government resources. In a related notice, the CDFI Fund has proposed several revisions to the data points for the ACR and adoption of a new CTLR, which would provide a standardized data collection capability.

General Comment

While CUNA supports the CDFI Fund's ongoing efforts to evaluate and consider the efficiency and relevance of its certification and monitoring process, we strongly believe the proposed revisions to the

¹ Notice of Information Collection and Request for Public Comment, 85 Fed. Reg. 27275 (May 7, 2020).

² Agency Information Collection Activities; Proposed Collection: Comment Request, 85 Fed. Reg. 27274 (May 7, 2020).

certification application fail to achieve these goals nor would they further the purposes of the CDFI Program. In fact, the proposed application changes could ultimately serve as unnecessary barriers for qualified credit unions to access the CDFI designation. In addition, the proposed amendments were not supported by relevant research, not developed in coordination with relevant stakeholders, and do not clearly state how and why the current program application needs such substantial revision. As a result, the proposed application would ultimately discourage new credit unions' interest in the CDFI program and could potentially harm the credit unions currently participating.

Credit unions are and have always been deeply committed to serving their communities and, without credit unions' active participation in the CDFI program, these communities would be further disadvantaged. We strongly encourage the Fund to reconsider its proposed amendments and refocus its efforts on finding ways to encourage, rather than discourage, participation from community-based credit unions.

The Proposed CDFI Certification Application is flawed and should be reconsidered

Credit unions are community-based, not-for-profit depository institutions subject to rigorous regulatory oversight, regular examinations, public reporting, and member accountability. The proposed CDFI Certification ignores the complex regulatory environment surrounding credit unions and fundamentally misunderstands their structure and mission.

In the proposed Basic Information section, the proposal would include ten questions requiring a credit union to demonstrate its board is democratically elected. As all credit unions are required *by law* to be democratically controlled cooperatives, the addition of multiple questions on this subject is redundant and unnecessary. In the aggregate, this proposal would only serve to increase the time and cost to complete the CDFI Certification Application, which could have a detrimental effect on participation.

Similarly, the proposed Primary Mission section fails to recognize that CDFI-designated credit unions already operate pursuant to comprehensive regulatory requirements implemented by the National Credit Union Administration (NCUA) and the Consumer Financial Protection Bureau (CFPB). Under the regulation and supervision of these federal regulators, not to mention relevant state laws, credit unions comply with a host of rules meant to be a safeguard against anti-consumer products and practices. Despite this fact, the proposed Primary Mission section would add a series of questions about each and every financial product and service offered by the credit union – all in the name of demonstrating the credit union is complying with CDFI principles. These additions would unjustifiably add to the overall time and cost of completing the CDFI application.

It is particularly troubling that the proposed application would ask additional questions for all the applicant's product offerings regarding the annualized rate of interest and other fees charged to borrowers. In particular, for purposes of calculating this rate, the Fund would require applicants to use the methodology prescribed in 32 CFR § 232.4 of the Military Lending Act (MLA) (referred to as the Military Annual Percentage Rate (MAPR)) – irrespective of the borrower's status as an active duty servicemember or dependent. Evaluating all products using the MAPR would not only misunderstand the MLA's definition of a covered borrower, but is an attempt to create an across-the-board standard for evaluating consumer financial products that does not reflect the realities of the consumer credit market nor how finance charges are calculated for non-MLA borrowers. If adopted, these questions could inadvertently result in the arbitrary

cessation of or reduction in the availability of products that might have a *seemingly* high MAPR or “all-in” cost of credit but reflect reasonable pricing determinations.³

In addition, federal credit unions, unlike other financial institutions, comply with a usury cap determined by the Federal Credit Union Act and the NCUA Board.⁴ The current 18 percent cap applies to all federal credit union loans except originations made under NCUA’s consumer-friendly Payday Alternative Loan program, which are capped at 28 percent.⁵ NCUA’s long held practice is to follow the definition of “finance charge” found in section 1026.4(a) of Regulation Z, not the MLA’s “all-in” MAPR, to determine compliance with the usury cap.⁶ State-chartered credit unions comply with usury laws set by their respective jurisdictions. Using the MAPR as the exclusive lens through which to evaluate all consumer credit products is inappropriate and we strongly object to the CDFI Fund adopting this change.

While CUNA agrees the CDFI Fund should seek to ensure that entities receiving its certification reflect the Fund’s principles, we are concerned that the proposed certification application changes could create unnecessary barriers to accessing the program for community-based credit unions. The Fund should reconsider this proposal and instead focus on evaluating its credit union participants by further developing a partnership with the NCUA and using the information collected by NCUA during its routine examination process to encourage greater CDFI participation.

Conclusion

On behalf of America’s credit unions and their 120 million members, thank you for the opportunity to share our thoughts on the CDFI Certification Application. If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,



Alexander Monterrubio
Senior Director of Advocacy & Counsel

³ For example, a Pennsylvania state-chartered credit union could offer a consumer-friendly small dollar closed-end loan through the Credit Union Better Choice program. These loans are endorsed by state authorities and feature a 21 percent interest rate, a 90-day maximum term, a loan amount is \$100-500, a \$25 application fee, and include a savings component. However, these loans – despite their pro-consumer nature – would be considered to have a 51.46 percent “all-in” APR or MAPR.

⁴ 12 U.S.C §1757(5)(A)(vi)(I).

⁵ 12 CFR 701.21(c)(7)(A).

⁶ See NCUA Legal Opinion Letter, 91-0412 available at <https://www.ncua.gov/files/legal-opinions/OL1991-0412.pdf>; see also 12 CFR 226.4 (2010).