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Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington DC 20220
Submitted via the web portal at https://www.reginfo.gov/public/do/PRAMain

Re: Proposed CDFI Program–Certification Application and Annual Reporting

The undersigned organizations appreciate the opportunity to comment on the final draft of the New CDFI Certification Application ("Application"). In November 2020, a coalition of groups that included many of the undersigned groups here urged the CDFI Fund to overhaul its Application to ensure that the primary mission of any CDFI is to promote community development. We are very supportive of the results of this overhaul in the Application, which reflects a meaningful commitment to achieving this goal.

In recent years, many affirmatively harmful financial products and practices have been pushed on underserved communities in the name of "access to credit" and "financial inclusion." Most CDFIs stay away from these harmful products and are true to their mission but far too many entities have obtained CDFI status despite engaging in these irresponsible financial practices. CDFI status should be reserved for only those entities that exemplify the gold standard of responsible lending; it should *not* be available to companies lending at APRs approaching 200%, to lenders peddling unsustainable mortgages similar to those that helped cause the Great Recession, or to depositories that charge frequent, expensive overdraft fees.

We commend the Fund for closing many loopholes that allowed entities to become certified despite engaging in these and other abusive practices. We are especially pleased that the Fund has, on the whole, adopted bright-line standards to determine CDFI eligibility. The recent phenomenon of exploitation of CDFI status has demonstrated that entities that are not truly mission-driven will seek to take advantage of CDFI status for their own ends. To guard against such behavior, it is critical that the Fund draw clear, bright lines that are less susceptible to manipulation. Below, we address several critical aspects of the Application:

- **We urge the Fund to prevent CDFIs from lending above a fee-inclusive 36% APR (or lower state limits under state law) but nonetheless appreciate the Fund's scrutiny of predatory loans.** We continue to urge the Fund to adopt a categorical prohibition on CDFIs lending above 36% APR. If the Fund will not adopt this bright-line restriction, the Application's approach to lending above 36% represents a significant improvement over current CDFI guidelines. We applaud the Fund for asking questions about the features of applicants' loans that carry an interest rate above 36%, and excluding from certification any lender whose covered products have specific, identified harmful features. We support the Fund's decision to draw clear, measurable lines and make clear that each question is, by itself, sufficient to preclude the applicant from being certified.

- **The Fund rightly requires CDFIs to lend based on the borrower's ability to repay, and should rigorously police CDFIs that do not satisfy this condition.** We strongly support the Fund's determination that CDFIs are required to lend based upon a borrower's ability to repay. Lending based on a borrower's ability to repay is a fundamental tenet of responsible lending. Thus, meaningful ability-to-repay analysis is required, and we commend the Fund for adopting the following crucial definition of ability to repay: whether the borrower "has an ability to repay the loan according to the terms of the loan, meet any of the borrower's other major financial obligations, and still pay basic expenses, without having to reborrow or refinance." **We urge the Fund, however, to go further and make failing to underwrite an automatic basis for denial of certification**. If the Fund will not accept that approach, it must closely scrutinize any purported explanations for not lending based on demonstrated ability to repay and cannot be misled by arguments about alleged "innovation" precluding the need for robust underwriting.

- **We commend the Fund's explicit requirement that Applicants abide by many important mortgage QM protections.** We fully support the Fund's decision to close the loophole in existing regulations that exempted CDFIs from essential consumer protections in the Ability-to-Repay/Qualified Mortgage rule (ATR/QM rule).

- **The Fund's overdraft rules permit CDFIs to continue to operate high-cost overdraft programs and charge exorbitant NSF fees.** While we are generally supportive of the Application, we object to its treatment of overdraft loans and NSF fees. Unfortunately, here the Fund eschewed bright-line rules – including, as previously suggested in the November 2020 comment, a cap of 6 overdraft fees per borrower, per year – in favor of undefined scrutiny of applicants' overdraft programs. While we appreciate the attention paid to high-cost overdraft programs, the Application falls short by not setting bright-line benchmarks in this area.

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On the whole, the undersigned organizations strongly support the CDFI Fund's efforts to ensure that the primary mission of any CDFI is to promote community development. While the Fund should go further in some areas (particular on lending above 36% and regarding overdraft), the Application meaningfully restricts the ability of cynical actors to exploit loopholes in the CDFI certification process. We are pleased to strongly support the Application, and to urge the Fund to vigorously enforce it to ensure that CDFI certification is truly reserved for mission-driven, community development organizations.

Signatories

Arkansans Against Abusive Payday Lending
CAMEO-California Association for Micro Enterprise Opportunity
California League of United Latin American Citizens (LULAC)
California Reinvestment Coalition
Center for Responsible Lending
Consumer Federation of California
Elder Law & Advocacy
National Consumer Law Center (on behalf of its low-income clients)