INDEPENDENT COMMUNITY
BANKERS of AMERICA®

Via electronic submission

November 5, 2020

Tanya McInnis
Program Manager
Office of Certification, Compliance Monitoring and Evaluation
Community Development Financial Institutions Fund
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Regarding the CDFI Certification Application, the Annual Certification and Data Collection Report, and the Certification Transaction Level Report

Dear Ms. McInnis:

The Independent Community Bankers of America ("ICBA")[1] welcomes the opportunity to respond to the Community Development Financial Institution ("CDFI") Fund's ("Fund") Notice of Information Collection and Request for Public Comment ("Notice") regarding the Certification Application ("Application"), the Annual Certification and Data Collection Report ("ACR"), and the Certification Transaction Level Report ("CTLR"). While ICBA strongly supports the mission of all CDFIs and the Fund's efforts to effectively oversee and manage the program, we are concerned that the proposed changes discussed in the Notice will harm existing CDFI banks and significantly deter interest from new CDFI applicants. This will have the net effect of diminishing the number of CDFI banks in the country, and as such, threaten the survival of the program.

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[1]The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than $5 trillion in assets, over $4.4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

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The Fund has neglected to clearly articulate whether the existing program parameters are deficient, and if so, how the proposed changes would remedy those deficiencies. Further, if such deficiencies do exist, ICBA urges the Fund to explore how alternative solutions might better achieve the desired remedies.

Background

Community banks provide a wide range of financial products and services in economically distressed target markets, including mortgage financing for low-income and first-time homebuyers, flexible underwriting, consultative services, and personal relationships that help provide development financing for their communities. Approximately 150 of these community banks are recognized as CDFI banks, comprising nearly 15 percent of all CDFIs.

To first achieve certification, banks must submit a CDFI application, which stipulates seven criteria. Once the certification is obtained, CDFI banks must then submit an annual certification, which demonstrates continued compliance with the stipulated criteria. In 2017, the Fund initiated a review of its CDFI initial certification and annual certification policies and procedures. The stated reason for the review was to ensure that “practices continue to reflect and represent the evolving nature of CDFIs, as well as to safeguard government resources.”

The CDFI Fund should articulate why changes are required, and seek comment on those reasons, before proposing these changes.

The Fund contends that the proposed changes in the Notice reflect the comments raised in the 2017 review, yet there is no substantive discussion of how the proposed changes “reflect and represent” the evolving nature of CDFIs, nor is there discussion of how CDFIs are “evolving,” and why such changes are necessary.

Community banks already comply with several dozen consumer finance laws and regulations, aimed at creating a responsible lending environment. Further, these community banks, regardless of CDFI status, are annually examined and audited to ensure compliance with these consumer protection laws. While the Fund’s stated intention behind this proposal – ensuring that financial institutions originate responsible products – ICBA contends that every community bank already does, and each federal or state banking agency ensures that responsibility. In addition to ensuring responsible products originated in compliance with consumer protection laws are adhered to, the federal and state banking agencies are also charged with ensuring the safety and soundness of banking operations. The state and federal banking agencies are already experienced to consider this delicate balance when examining community banks. However, if the CDFI Fund were to supplant the FDIC’s or other regulatory entity’s judgement with its own, then regulated and federally-insured community banks will be caught in the middle between two governing bodies. The proposal does not attend to safety and soundness concerns with which community banks must contend.

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In terms of accountability and responsibility to their communities, community banks are once again unique among all CDFIs entities in that they must adhere to the Community Reinvestment Act (“CRA”). Through CRA exams and public reports, community banks already produce the information that the Fund proposes to collect. Rather than creating a new, redundant reporting mechanism on community banks, ICBA urges the Fund to collaborate with the FDIC, FRB and OCC to collect data that can already be ascertained through the normal course of CRA examinations and reports.

ICBA research indicates that there are likely several hundred community banks that already perform CDFI-type mission work, yet to do not have their certification due to the complexities, costs, or unnecessary or superfluous burden to seek and receive certification. From these banks' perspective, they are fulfilling their mission by serving their communities – anything that detracts from that mission, such as additional paperwork and reporting, is hard to justify. ICBA is currently engaged in raising awareness and justifying that the extra paperwork and reporting is worth the effort, but unfortunately, these proposals will likely undermine that campaign. Worse yet, many banks that currently hold their certification will likely find these new burdens not worth the benefit of continued certification. The Fund needs to reexplore how it can protect the CDFI brand by tamping out bad actors without unintentionally discouraging and burdening good actors. Failure to do so will undoubtedly lead to numerous CDFI banks, which are good actors, exiting the program. This is even more true for those community banks that currently have no CDFI Award or grant. The burden must be commensurate with the benefit – yet the CDFI Fund has not explored an appropriately elastic scope.

ICBA recommends the Fund repropose a rule that includes a crisp explanation of (1) the problems for which it is trying to solve, (2) how the proposed solutions will efficiently address those problems, and (3) why the proposed solutions are better suited or more cost-effective than other solutions.

Primary Mission—Financial Products and Services
The governing statute for the CDFI Fund states that a CDFI must have ‘‘a primary mission of promoting community development.’’ The CDFI Fund proposes to “strengthen” the primary mission test and examine the extent to which an entity's financial products and services align with that mission by assessing several factors, including whether the product/service improves the social and/or economic conditions of underserved people and/or residents of economically distressed communities and is affordable and based upon a borrower's ability to repay.

The Fund is proposing to revise its application and annual certification to ensure that entities provide financial products and services in a way that do not harm consumers. While ICBA supports this goal, the way the Fund proposes to assess these criteria could prove to be troublesome. To assess compliance with these principles, the application asks a series of questions related to <u>every</u> financial product and service offered by the applicant, including

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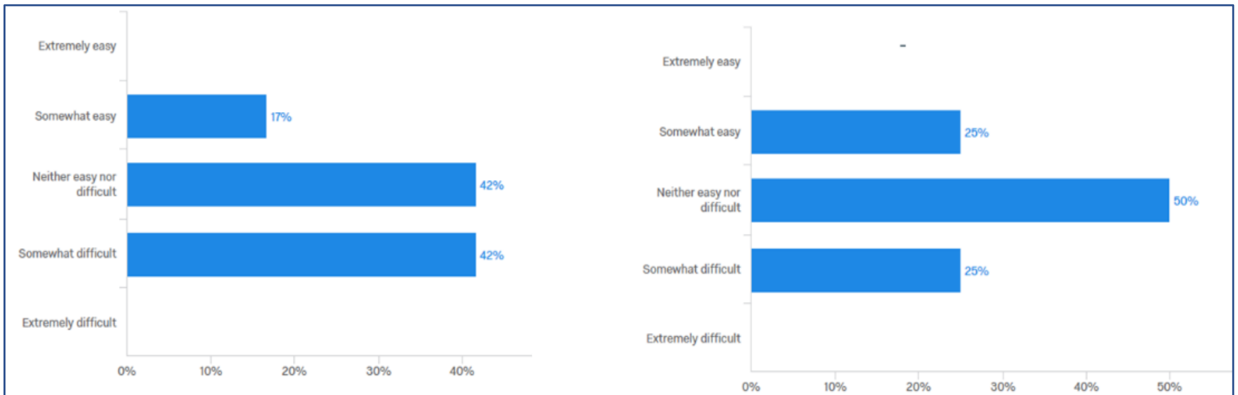
questions on the annualized rate of interest and other fees charged to a borrower using the Military Annual Percentage Rate ("MAPR").

Though the Fund intends to provide an apples to apples comparison of products across the board, ICBA is concerned that the Fund will arbitrarily discourage or foreclose upon certain products that might have a comparatively high MAPR to other products, despite extenuating circumstances that would justify the higher-priced product. Because CDFI banks serve populations that are traditionally un- or under-banked, the risk profiles of the customers may dictate pricing for a financial product or service that is not commensurate with more fully-banked populations. Indeed, this may be required from the prudential regulator as a risk mitigant against safety-and-soundness concerns.

Separate from the issues stemming from the use of MAPR, the remaining process to assess primary mission for financial products is extremely onerous, asking a series of questions for every single financial product and service offered. Again, if the purpose is to tamp down on bad actors and eliminate abusive products or services, the Fund should recognize safeguards and reports already put in place by federal regulators and their routine examinations. These requirements would be better targeted toward CDFIs that are not routinely supervised by state or federal agencies.

Community banks are responsible stewards of their communities.
CDFI banks have taken the extra step of achieving a CDFI certification from the Fund. As it currently stands, the process to apply for and maintain a CDFI designation is a substantial endeavor. Though all community banks serve their communities as a primary mission, recent surveys of CDFI community banks found that the application and annual certification process stands as a barrier to even more community banks being recognized as CDFIs. Nearly half of all respondents found the application difficult.



Response to question: "How easy was the process of applying for certification?"

Response to question: "How easy is the annual certification report?"

While it is understandable that the Fund wants to ensure that the entities that achieve certification actually pursue and meet the criteria, ICBA contends that the Fund should not create an undue burden of demonstrating compliance with that criteria. Otherwise, the result is an exercise that prioritizes form over function. Rather than add to the administrative burden of demonstrating compliance with regulations, ICBA recommends that the Fund explore opportunities to leverage data and resources that community banks already produce and provide as the result of being examined and supervised entities.

Thank you for giving ICBA the opportunity to provide comments to the Fund's Notice. ICBA hopes that the Fund will continue in its goal to strengthen the CDFI brand, but that it will not do so to the detriment of the hundreds of mission-driven community banks and CDFI banks that strive to better their communities and serve their populations. If you wish to discuss these comments further, please do not hesitate to contact me at Michael.Emancipator@icba.org or 202-821-4469.

Sincerely,

/s/

Michael Emancipator
Vice President and Regulatory Counsel