



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

March 10, 2017

David Meyer
CDFI Fund
1500 Pennsylvania Ave., NW
Washington, DC 20220

RE: CDFI Fund RFI on Certification Criteria

Dear Mr. Meyer:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing in response to the Community Development Financial Institutions (CDFI) Fund's Request for Information (RFI) regarding CDFI certification. NAFCU appreciates this opportunity to provide feedback on the existing process as the Fund embarks on a review of its CDFI certification tests. Generally, NAFCU believes that the Fund should eliminate redundant required documentation in some areas of the certification process, and lessen the overall reporting burden in recognition of credit unions' unique nature.

Background

As of January 31, 2017, there were 287 credit unions certified as CDFIs, representing approximately 27 percent of all certified institutions and more than 50 percent of all CDFIs' total assets. Clearly, CDFI credit unions are critical partners in the CDFI Fund's mission. In recognition of this importance, and in exploring ways to enable even more credit unions to be recognized as CDFIs, the NCUA, CDFI Fund and Treasury entered into a trilateral Memorandum of Understanding (MOU) in January 2016. A significant component of the MOU included the introduction of a streamlined CDFI application for credit unions. While the streamlined application certainly furthers the MOU's goal of increasing the number of CDFI credit unions, NAFCU believes that the CDFI Fund should take additional steps, beyond the streamlined application, to increase the number of CDFI credit unions while still maintaining the program's integrity.

Specifically, NAFCU believes that the CDFI Fund should more readily leverage the fact that, by statute and their implicit nature, credit unions are well-regulated, not-for-profit, depository institutions that are operated, owned and held accountable by their members. Among all entities eligible for CDFI certification, credit unions are unique in holding all these characteristics, which align directly with the *Community Development Banking and Financial Institutions Act* (CDFI

Act). Accordingly, NAFCU believes that as CDFI eligibility and reporting requirements are revisited and revised, the CDFI Fund should acknowledge these defining characteristics by eliminating duplicative requirements, or at least providing presumptive compliance with such criteria.

General Comments

As the Fund reviews its application and reporting requirements, NAFCU urges it to closely consider the difference between regulated and unregulated entities, and the already thorough reporting requirements with which credit unions comply. Credit unions are subject to numerous consumer protection provisions in the *Federal Credit Union Act*, including a usury ceiling, a prohibition on prepayment penalties, and a limit on the amount of loans that can be originated to small business members. Credit unions are also statutorily limited to serving members of groups that have a close affinity

In addition to the *Federal Credit Union Act*, credit unions are regulated by numerous other federal consumer protection laws and regulations, such as the *Truth in Lending Act*, the *Real Estate Settlement Procedures Act*, the *Fair Credit Reporting Act*, the *Fair Housing Act*, and many others. No matter how small or understaffed a credit union might be, every credit union must comply with these statutes and regulations.

Separate from a credit union's internal compliance department, every federally-insured credit union also receives an external consumer compliance review on a periodic basis. The National Credit Union Administration (NCUA), or the appropriate state regulatory agency, examines credit unions to ensure compliance with consumer protection rules and regulations. Credit unions are required to cure any deficiencies that might be found. Even when the examiner is not on-site, federally-insured credit unions are required to submit Call Report data to NCUA every quarter. As NCUA is in the process of updating the content of the call report, and modernizing the data input mechanisms, NAFCU recommends that the Fund collaborate with NCUA and seek out ways it could leverage data already provided in the Call Report.

Understandably, the Fund wants to ensure that CDFI designees act in good-faith, are mission driven, do not participate in usurious or unscrupulous activities. It is therefore reasonable to have a certification process and ongoing reporting requirement to weed-out those entities that do not hold such characteristics. However, since credit union regulatory agencies share many of these common concerns, all federally-insured credit unions are already examined for such characteristics, and as such, the Fund should rely on these agencies' findings and requirements rather than requiring redundant information to prove as much. Essentially, state and federal agencies are independently ensuring that credit unions are already meeting many of the Fund's goals. The very fact that these credit unions exist and operate under the color of law should be

CDFI Fund
March 10, 2017
Page 3 of 15

sufficient to meet three-fifths of the Fund's requirements. The three remaining eligibility requirements not already reviewed by other agencies could be further streamlined.

Attached to this letter are NAFCU's responses to each of the individual questions in the RFI. NAFCU appreciates this opportunity to provide comments on ways to improve the current process, and we look forward to seeing our recommendations implemented. Should you have any questions, please do not hesitate to contact me at (703) 842-2249 or memancipator@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Emancipator", with a stylized flourish at the end.

Michael Emancipator
Senior Regulatory Affairs Counsel

I. Certification Criteria

A. Legal Entity

- 1. The statute does not indicate how long an organization must be in existence to be considered a “person (other than an individual).” Should there be a minimum period of time an organization should be in existence before applying for CDFI certification? If so, how long? If not, why not?*

Although NAFCU has no comment on how long an organization must be in existence, NAFCU believes that the certification criteria should not include a requirement for credit unions to provide evidence of being an entity. As a requirement for federal insurance, credit unions must be legal entities. Therefore, by virtue of their federally-insured status, such credit unions should presumptively be found to be legal entities.

- 2. Is there additional documentation, beyond an organization’s establishing documents filed with State jurisdictions, that should be accepted to demonstrate that an organization is a legal entity?*

NAFCU does not believe that additional documentation is required to demonstrate an entity’s legal status. In fact, if an entity is already regulated by a federal agency, such as credit unions, then the Fund should presumptively find the applicant to hold legal entity status.

B. Primary Mission

- 1. Should the currently required board-approved documentation and narrative statement be sufficient to demonstrate that an Applicant’s primary mission, or should the CDFI Fund apply a more prescriptive primary mission test? For example, should the CDFI Fund apply a more explicit, possibly quantitative, definition of what it means to “promote community development” that Applicants would be required to meet? If so, what should be the definition and what test should be applied? Are there criteria that the CDFI Fund should not consider and why?*

NAFCU believes that the “primary mission” criteria is an important element to CDFI certification, but a prescriptive test beyond a narrative would be difficult to implement and inherently hard to verify. Adding a prescriptive test would likely add a layer of burden without much likelihood of producing a measurable benefit. However, if a credit union has a low-income designation conferred upon it by NCUA, then the Fund should consider such designation as sufficient evidence of a credit union’s “primary mission” of community development.

2. *Should there be different standards for meeting the primary mission test for nonprofit versus for-profit organizations, particularly for-profits that are not Insured Depository Institutions? If so, what different standards should be applied?*

Once again, this criteria is difficult to quantify and does not lend itself well to prescriptive tests. NAFCU believes that the current requirements are appropriate.

3. *What evidence can the CDFI Fund use to confirm an Applicant's adherence to a stated community development mission? For example, how can the CDFI Fund distinguish between an organization that is fully committed to a community development mission and one that targets the same communities or populations as a CDFI and claims a community development mission, but whose actions do not demonstrate intent to create community development and/or are predatory in nature?*

While NAFCU believes that it is difficult to provide evidence that demonstrates a primary mission of community development, it should be relatively easy for the Fund to identify entities that are *not* committed to community development. Evidence of repeated violations of fair lending, usurious loan rates, high default rates, and other consumer protection violations could serve as such evidence. However, NAFCU urges the Fund to note that credit unions already undergo such evaluations during routine examinations, such as the Consumer Compliance Rating System. Requiring credit unions to demonstrate compliance to the Fund would be unnecessarily duplicative.

4. *To what extent should the CDFI Fund evaluate the Financial Products and/or Financial Services offered by an Applicant to determine its ability to meet the primary mission test? What test would the CDFI Fund apply in any such evaluation of Financial Products and/or Financial Services?*

Much like NCUA and other prudential regulators do for regulated entities, the Fund should evaluate an applicant's products and services to ensure that the applicant does not violate federal consumer protection laws. Further, the Fund should require unregulated entities to have a system in place to internally monitor compliance, much like credit unions are already required to do. To be clear, though, credit unions are already examined by NCUA to ensure compliance, and should not be required to submit redundant verification of compliance to the Fund.

5. *Should the CDFI Fund require Non-Regulated CDFIs to provide documentation that all its affiliates must collectively meet the primary mission test? Why or why not?*

Yes, for the sake of equal treatment across industry type, NAFCU believes this requirement should apply to non-regulated CDFIs, as well.

C. Financing Entity

1. *Should the term “predominance” be defined more specifically, and if so, how?*

Although credit unions are presumptively deemed to be financial entities, NAFCU believes that the “predominance” standard could be better defined as “plurality” of an entity’s assets being dedicated to financial products, development services, and similar financing.

2. *Should entities that provide less than a plurality of financing activity ever be considered Financing Entities? If so, under what circumstances and is there a minimum level of activity that should be required?*

No, NAFCU believes entities should only be eligible for the CDFI designation so long as they provide at least a plurality of financing activity.

3. *How else could a CDFI’s level of financing activity be measured in addition to current measure of assets and staff time dedication?*

Although this standard does not apply to credit unions, the Fund might want to evaluate and measure an unregulated entity’s total customer/client base compared to the number of customers/clients that utilize the entity’s financing services.

4. *For Non-Regulated CDFIs, is the current “predominance of assets” test appropriate, or should alternatives or additional considerations be considered?*

NAFCU believes the Fund should look into additional ways to evaluate a non-regulated entity’s “predominance of assets” test, including the use of “plurality” and percentage calculation of total clients to those who count toward an entity’s financing activities.

5. *Should Non-Regulated CDFIs be permitted to include the financing or Financial Services activity of a mission-driven Subsidiary as part of the assessment of the parent CDFI’s financing activities?*

No. A non-regulated CDFI should be required to stand on its own when demonstrating its financial services activity. Otherwise, the subsidiary's activity could count toward a significant amount of the parent’s financing activity, despite the fact that the subsidiary does not have a primary mission of community development, or worse, could be usurious in its financing activities. If a subsidiary's activities are counted toward a parent’s financing activities, then the Fund should institute an additional check to ensure that the affiliate structure is not being used to avoid any of consumer protection requirements while simultaneously gaining the benefits of CDFI designation.

6. *Should Non-Regulated CDFIs be permitted to rely upon the financing or Financial Services activity of a parent CDFI as part of the assessment of the Subsidiary's or Affiliate's financing activities?*

For the reasons stated above, if a parent's or subsidiary's activity is used to count toward cross-affiliate financing activity, then the non-certified CDFI affiliate should be further examined to ensure circumvention of consumer protection rules is not occurring.

7. *Should an organization applying for CDFI certification be required to transact a minimum number or dollar amount of loan or equity investments to be considered a financing entity? Should the Applicant be required to have at least one or more years of loan or equity investment origination? If so, what should those rules be?*

NAFCU does not believe that there should necessarily be a minimum dollar amount of loan or equity investments required for certification.

8. *Should an organization that only services loans or Equity Investments or has very few transactions be considered a financing entity?*

NAFCU believes that the determination of financing activity should hinge on the percentage of non-financing activity compared to financing activity rather than examining absolute numbers.

9. *Should certified CDFIs be required to offer loans or Equity Investments each year, in order to maintain certification status?*

NAFCU believes that CDFIs should have at least *some* loans originated every year in order to be considered a financing entity.

10. *Should transactions with affiliates be considered arms-length transactions for purposes of meeting the financing entity criteria? How should an "arms-length transaction" be defined?*

NAFCU believes that the Fund should not consider any transactions with affiliates, arms-length or otherwise, as counting toward the financing entity criteria. As discussed above, such options provide opportunities for evasion and "gaming" of eligibility criteria.

11. *Should Applicants be required to disclose the expected amount and types of lending that may be made to Affiliates and Insiders in their certification applications? Should such transactions be limited as a condition of certification? Why or why not?*

So long as transactions between affiliates do not count toward the financing activity threshold, NAFCU does not believe that the Fund needs to examine the amount and types of lending arrangements between affiliates.

12. How should the CDFI Fund determine what is included in “similar financing activities” when defining “Financial Products?”

NAFCU believes that “similar financing activities” should include checking accounts, savings accounts, and other financial services that enable individuals to achieve overall financial health.

D. Serves an Investment Area/Targeted Market

1. Is the current standard that 60 percent of a CDFI’s Financial Product activities must be in qualified Target Markets the right standard?

NAFCU believes that the current 60 percent standard is an appropriate measure to demonstrate an applicant’s commitment to a target market. It shows that the majority of an applicant’s activity is dedicated to a target market.

2. Should there be different thresholds for different institution types? (i.e., insured depository institutions, nonprofit loan funds, venture capital funds?)

For equitable reasons, NAFCU believes that the 60 percent threshold should be applied to all institution types.

3. Should statistical sampling of transactions be required to establish a current baseline of activity and document the Target Markets that they are serving?

NAFCU believes that the current methodology for demonstrating service to target markets is satisfactory.

4. CDFI Fund does not currently have a method of recognizing or applying the provision of Financial Services toward the current 60 percent threshold test for certification. In addition to the level of Financial Products provided by an Applicant, how should an Applicant receive credit for the provision of Financial Services toward meeting any threshold test? How should this be measured?

Unlike unregulated or non-depository institutions, credit unions offer many financial services in addition to traditional financing that are not currently considered by the Fund as a way to meet Target Market service requirements. For example, many individuals in a Target Market are only able to obtain a savings or checking account at a credit union, yet the Fund does not attribute those services toward the Target Market test. Savings and checking accounts are crucial channels to mainstream banking that are fundamentally required for individuals seeking to achieve financial health. NAFCU strongly urges the Fund to include checking and saving accounts in its Target Market calculations.

Further, NAFCU believes that requiring both an organization's dollar amount of financing activity *and* number of financial transactions is too strict of a requirement. Not only is that requirement not statutorily mandated, but NAFCU advocates that such a standard does not adequately take into account the type of consumer that these organizations are dedicated to serving. Many of the transactions from Target Market consumers are much smaller in dollar size than a typical transaction from a non-Target Market consumer.

As such, while an institution may be able to meet the 60 percent threshold for number of transactions, it might become difficult to meet the same dollar amount threshold. For example, small dollar loans are much smaller than car loans and mortgages. As a result, even though a credit union might originate a very high number of small dollar loans, the total dollar percentage might not reflect that activity. As such, NAFCU strongly urges the Fund to consider an organization's percentage of *either* the dollar amount of loans *or* the number of loans made to Target Market consumers.

5. Is it appropriate to continue considering an Applicant's most recent fiscal year in determining whether it meets the threshold test, or should a longer period be considered? Should the CDFI Fund consider an Applicant's portfolio of loans outstanding?

NAFCU believes that the Fund should consider an Applicant's portfolio of loans outstanding in addition to loans newly originated for the most recent fiscal year. Taken alone, year-to-year variations in loan originations are not indicative of a change in an organization's priorities. Narrowly considering one-year's worth of data could unfairly punish an organization for events that are largely out of their control.

6. Should CDFI Fund change the way it defines Investment Areas (ie., poverty rate greater than 20%; MFI at 80% or below; unemployment at 1.5 times national average). Units include counties, census tracts, and Indian Reservations.

NAFCU believes that the Fund's current definition of Investment Areas is satisfactory.

7. Should CDFI Fund continue to allow investment areas to be partially composed of individual units that do not qualify as investment areas, or should all units within investment area meet required qualifications?

NAFCU urges the Fund to permit both contiguous investment areas and non-contiguous investment areas.

8. *Should the Targeted Populations be expanded to automatically accept more specifically defined Other Targeted Populations that are eligible for other Federal programs that support economic development in Low-Income communities? If so, which ones and why?*

NAFCU believes that the Fund should accept additional objective methodologies for LITP classification, such as NCUA low-income classification, as well as branch locations and marketing targets.

9. *CDFIs currently are approved to serve Targeted Populations within a defined geographic unit at below and up to a national level. Should all Applicants proposing to serve Targeted Populations be approved to serve such Target Markets nationally?*

NAFCU is not opposed to permitting CDFIs to be approved to serve such Target Markets nationally.

10. *Given that it is unlikely that most CDFIs that work broadly across the nation will complete transactions in every State every year, how can organizations demonstrate that they serve a national Target Market, whether for an Investment Area or for a Targeted Population? Should there be a certain minimum geographic dispersion of actual investments?*

Since it may be difficult to originate loans in every state, every year, NAFCU believes that the Fund should also consider currently outstanding loans despite the fact that they were originated in preceding years. Additionally, purchased loans that were not originated by the CDFI should also be able to count toward this threshold.

11. *Some CDFIs serve multiple markets that are part of a multi-State region or are comprised of geographically unconnected markets. When should the CDFI Fund recognize these practices as constituting a national Target Market?*

NAFCU believes that any CDFI with transactions of outstanding loans in more than 25 states should be eligible for a national Target Market designation.

E. Development Services

1. *Should the CDFI Fund more explicitly define Development Services? If so, how should it be defined?*

NAFCU believes that the current definition of Development Services is sufficient, but we urge the Fund to consider a credit union's Call Report in satisfaction of these services. This would help alleviate some of the burden included in a credit union's reporting requirements.

2. *Should the CDFI Fund require CDFIs to provide a corresponding Development Service for each Financial Product and Financial Service?*

As this would create a unneeded burden, and could actually incentivize CDFIs to *not* develop additional financial products and financial services, NAFCU strongly urges the Fund to not develop such a new requirement.

3. Should a certified CDFI be required to offer each Development Service each year to maintain certification status?

The Fund should maintain flexibility in the type of Development Service offered, and should allow the CDFIs to innovate and meet their consumers' needs as they deem appropriate.

F. Accountability

1. What percentage of a CDFI's board members should satisfy accountability rules? Should different percentages apply to different types of boards, i.e. governing vs. advisory boards?

NAFCU believes that the Fund should require a majority of an applicant's Board members to be representative of the CDFI Target Market.

Additionally, because only credit union members are eligible to become Board members, every credit union Board of Directors is made up of the very people that the credit union serves. Further, Board members are voted on by the members of the credit union, with each member receiving one vote, regardless of total deposits. This 'one member, one vote' nature makes credit unions unique, and NAFCU argues that this structure makes credit unions implicitly accountable to their members and target market. Therefore, NAFCU believes that credit unions should not need to separately demonstrate accountability through Board structure to the Fund, as such requirements are already monitored and enforced during routine examinations.

2. Is representation on an advisory board sufficient to demonstrate accountability?

NAFCU feels that an advisory board does not hold a binding level of authority over an organization's direction, and therefore, the Fund should no longer permit advisory boards to count toward demonstrating accountability.

3. Should CDFIs be able to demonstrate accountability through means other than board membership? If so, how?

NAFCU believes that board membership is still the best way to demonstrate accountability. Because credit union boards are limited to credit union members, NAFCU believes that credit union accountability is baked into the structure of credit unions, and should be presumed to meet accountability standards without further documentation.

4. *Is a business plan and a stratified, statistically significant random sample of lending by asset class and location sufficient to document accountability? Under what circumstances?*

NAFCU believes that business plans and lending activity do not demonstrate accountability, but rather demonstrate activity. Accordingly, such documentation is not an appropriate factor to consider an organization's accountability.

5. *Should accountability requirements differ based on a CDFI's type of Target Market, and if so, how?*

NAFCU believes the current standards are appropriate.

6. *How should the CDFI Fund assess accountability if a CDFI's Target Market includes borrowers or investees who are not members of a Targeted Population themselves (e.g., small businesses, micro businesses, and affordable housing developers, charter schools), but whose "end-beneficiaries" are?*

While NAFCU believes that such activity is appropriate to demonstrate compliance with the 60 percent Target Market activity threshold, we do not feel that accountability can be demonstrated by assessing an organization's lending or investment activity. Accountability is separate from activity.

7. *How should a CDFI demonstrate accountability to a national Target Market, in particular an Investment Area national in scope? Should there be a requirement to have local accountability to supplement a national governing or advisory board? In this context, how should the term "local" be defined?*

NAFCU believes that accountability standards for a national Target Market could be met if the organization's governing board has representation throughout the country. Board subcommittees could focus on ensuring that the organization is still held accountable to national Target Market interests.

8. *How should an Applicant that utilizes a web-based lending platform, especially one that serves a national Target Market, demonstrate accountability?*

Again, NAFCU feels that lending activity is a factor toward accountability, but is not sufficient.

G. Non-Governmental Entity

1. *Are the current standards for establishing that an Applicant is not owned or controlled by a governmental entity sufficient?*

They are not satisfactory, but are redundant for credit union applicants. As we have noted above, federally-insured credit unions cannot be governmental entities. Evidence of this should not be

required from federally-insured credit unions. NAFCU urges the Fund to provide credit unions presumptive compliance with this requirement and not require further evidence.

2. *Are there additional or alternative questions and/or documentation the CDFI Fund should require to determine if an Applicant is an agency or instrumentality of a Federal, State or local government?*

NAFCU is not aware of situations that warrant further documentation or alternative questions.

II. Certification Policy and Procedures

- A. *Should the CDFI Fund request information on the reason for applying for certification and intended use (e.g., funding requirement, marketing)?*

NAFCU does not believe that such a requirement is necessary and would actually increase burden without providing much benefit or insight.

- B. *Are there additional sources of data collected by other federal agencies that can be used to meet any of the seven certification tests? If so, please describe.*

Yes – NAFCU believes that NCUA data is a valuable resource for the Fund to leverage when considering credit union applicants, and NAFCU urges the Fund to rely on such information when determining whether an applicant meets all required criteria. This would be immensely beneficial and time-saving for credit union applicants. Otherwise, much of the information provided in the CDFI application is viewed as duplicative and wasteful. NAFCU recommends that the Fund collaborate with the NCUA on ways to leverage data already collected through the agency's routine course of business.

III. General Questions for Public Comment

- A. *“Community-based” is a term often used to describe CDFIs. How should “community-based” be defined and what does it mean for CDFIs to be “community-based?”*

NAFCU believes that entities should only be considered to be “community-based” if they are owned and governed by members of the community. This interpretation of “community-based” meets all the statutory requirements, while weeding-out those entities that might have a geographic location in, and services to, a Target Market, but are not truly community-based and are not community operated.

- B. *Although not defined in statute, the CDFI Fund allows Applicants that serve Native communities to self-designate themselves as Native CDFIs and apply for Financial*

Assistance and Technical Assistance through the Native CDFI Program. Applicants that self-designate as a Native CDFI must attest to providing 50 percent or more of their products and services to Native lands or Native populations. Should the CDFI Fund continue to allow Applicants to self-designate as Native CDFIs or should there be more defined standards that the CDFI Fund should verify? If so, what should they be?

NAFCU is not aware of any current challenges; we have no recommendations on this matter.

C. Should CDFIs be allowed to be composed of multiple legal entities (Subsidiaries and/or Affiliates)? And if so, must a CDFI include all of its Subsidiaries and/or Affiliates for consideration?

NAFCU does not believe that all affiliates of a CDFI need to be certified as CDFIs, themselves. Such a requirement would discourage viable applicants from seeking certification. However, NAFCU does not believe that subsidiary activity should necessarily count toward parent activity, and vice versa.

D. Should CDFI certification standards have more “bright-line” tests, i.e. specific thresholds and benchmarks that are, where possible, quantitative in nature, or should the CDFI Fund maintain flexibility to evaluate Applicants on a case by case basis, even at the expense of certainty for applicants?

NAFCU believes the current process is satisfactory and no changes are recommended at this time.

E. In addition to earlier questions regarding potentially different Primary Mission or Target Market standards based on institution type, are there other CDFI certification criteria standards that should vary based on institution type or the type of CDFI?

NAFCU strongly believes that, given their unique nature among all CDFI entities, credit unions should be given presumptive relief from having to demonstrate the following criteria: primary mission; legal entity; financing entity; accountability; and non-governmental entity.

F. Should “start-up” entities be able to be certified? How should the term “start-up” be defined?

NAFCU does not see any cause to prohibit “start-ups” from becoming certified.

G. Are there additional areas of CDFI certification policy or the CDFI certification application review process that could use improvement? If so, how?

NAFCU greatly appreciates the streamlined application that the Fund developed in coordination with NCUA. We ask that those benefits be conferred as a default for all interested, low-income credit unions, as many of the streamlined benefits leverage intrinsic characteristics that are present in such credit unions.