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**National Association of Federally-Insured Credit Unions**

January 27, 2023

CDFI Fund  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

**RE: Request for Comment Regarding Annual Certification and Data Collection Report Form and the Abbreviated Transaction Level Report (Docket No. 2022-27142)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Community Development Financial Institutions (CDFI) Fund’s notice and request for comment (RFC) regarding the Annual Certification and Data Collection Report (ACR) Form and the Abbreviated Transaction Level Report (TLR). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 134 million consumers with personal and small business financial service products. NAFCU supports the submission of data to ensure that certified CDFIs are fulfilling their mission of serving the underserved, but NAFCU discourages the CDFI Fund from implementing unduly burdensome reporting requirements on institutions that likely already lack sufficient resources. Additionally, NAFCU discourages the CDFI Fund from creating a “pre-certification process” and decertifying CDFIs based on their product and service offerings, especially because NAFCU has already seen some CDFIs unceremoniously decertified with little or no notice and opportunity to cure deficiencies.

As explained in NAFCU’s response to the CDFI Fund’s RFC regarding Target Market assessment methodologies,<sup>1</sup> NAFCU urges the CDFI Fund to follow the Administrative Procedure Act (APA) when issuing new rules or making changes to CDFI certification requirements. One of the purposes of the APA is to provide for public participation in the rulemaking process.<sup>2</sup> The changes proposed can impact the certification status of existing CDFIs and would benefit from input from the public, especially those who will be impacted, from the beginning of the process. The CDFI Fund should engage more robustly with CDFIs in order to properly implement the changes it has proposed. Implementing these changes through the Paperwork Reduction Act<sup>3</sup> is procedurally inappropriate and does not allow for sufficient consideration of stakeholder feedback.

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<sup>1</sup> NAFCU. *CDFI Target Market Assessment Methodologies* (December 19, 2022).

<https://www.nafcu.org/system/files/files/12.19.2022%20Letter%20to%20CDFI%20Fund%20re%20CDFI%20Target%20Market%20Assessment%20Methodologies.pdf>.

<sup>2</sup> 5 U.S. Code § 553.

<sup>3</sup> 44 U.S. Code § 3501.

## Transaction Level Report

Under the current CDFI certification policies, transaction-level reporting is only required in accordance with award compliance. Under the new certification policies, transaction-level reporting will be required for the verification of Target Market activity thresholds. NAFCU considers this to be unduly burdensome and discourages the CDFI Fund from requiring CDFIs to provide more data than necessary. While NAFCU understands the need for transaction-level data to assess award compliance, it is unnecessary to assess transaction-level data for those CDFIs that did not receive awards during that fiscal year. Many CDFIs are institutions that have limited resources to meet such compliance requirements in addition ensuring compliance with existing lending laws and rules. The proposed changes to the TLR will more than likely require existing CDFIs to hire additional staff to solely focus on compliance with the CDFI Fund's rules as proposed. CDFIs should be able to focus their resources on providing help to their communities, not unduly burdensome lending data reporting requirements from the CDFI Fund.

Additionally, the proposal requires new CDFI certification applicants to complete and submit an abbreviated version of the existing CDFI Program or Native American CDFI Assistance Program (NACA Program) TLR before submitting their CDFI Certification Application. This abbreviated TLR will be used to assess applicable Target Market percentage benchmarks in the applicant's proposed Target Market(s). Applicants must report on origination activity for their most recently completed fiscal year before submitting their application. This proposed requirement will create a "pre-certification process."<sup>4</sup>

The CDFI Fund has had an ongoing backlog of applications for over a year. This caused the CDFI Fund to abandon its definitive 90-day timeline for a certification determination.<sup>5</sup> Implementing a pre-certification process that will require the CDFI Fund to review transaction-level data before applicants may complete their submissions will require more resources from the CDFI Fund and inevitably create a backlog of applicants seeking pre-certification and an even greater backlog of applicants. NAFCU discourages the CDFI Fund from requiring transaction-level data prior to submitting an application in order to create a "pre-certification process."

## Annual Certification and Data Collection Report

To maintain their certification, all certified CDFIs are required to complete an ACR annually. Additionally, certified CDFIs must demonstrate compliance with the Target Market percentage benchmarks each fiscal year. The proposal explains that the ACR will use submitted TLR data to confirm Target Market activity. Certified CDFIs will be required to submit their TLR records prior

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<sup>4</sup> CDFI Fund. *Abbreviated CDFI Transaction Level Report Form for CDFI Certification Applicants and Certified CDFIs that are not current Financial Assistance (FA) Recipients Form & Data Point Guidance* (December 2022).

[https://www.cdfifund.gov/sites/cdfi/files/2022-12/TLR\\_ClearedVersion\\_1202022.pdf](https://www.cdfifund.gov/sites/cdfi/files/2022-12/TLR_ClearedVersion_1202022.pdf).

<sup>5</sup> CDFI Fund. *Reaffirming our Commitment to Impact in 2022* (January 31, 2022).

<https://www.cdfifund.gov/director-messages/35>.

to their ACR submission. In addition to allowing the CDFI Fund to annually assess CDFIs' compliance with certification guidelines, the ACR also collects data that provides insights into the CDFI industry. Currently, the ACR is due 90 days after the end of a certified CDFI's most recently completed fiscal year. The proposed changes extend the deadline for organizations to submit the ACR to 180 days after the end of their fiscal year.

NAFCU applauds the CDFI Fund for aligning the deadline for the ACR with the TLR. NAFCU appreciates the importance of data in understanding how CDFIs are making a difference in their communities. NAFCU supports the submission of data to ensure that CDFIs are maintaining service to their communities.

NAFCU also applauds the CDFI Fund for listening to public comments and eliminating the separate Certification Transaction Level Report (CTLR). Finally, NAFCU supports the CDFI Fund's decision to expand the use of federal regulator call report data to populate data in the Financial Data section as well as the Loans and Leases Table for Banks, Credit Unions, and Depository Institution Holding Companies. This will streamline the data reporting process and allow CDFIs to devote more resources to serving their members instead of completing paperwork.

Under the current standards, newly certified CDFIs do not have to submit their first ACR until their second fiscal year as a CDFI. The CDFI Fund should not remove this grace period for newly certified CDFIs. As mentioned above, complying with reporting requirements can be burdensome and costly, especially for smaller CDFIs that have minimal resources. Newly certified CDFIs should be given more time to adjust to their new certification and develop a system that is functional and productive. NAFCU strongly objects to the removal of this grace period.

The ACR's Responsible Financing section is proposed to contain questions about product offerings whose answers may result in a certified CDFI not being eligible for CDFI certification renewal. These questions are similar to those asked in the certification application, for example, RFP17 asks, "As of the last day of the reporting entity's most recently ended fiscal year, for each of the reporting entity's mortgage loan products, does the reporting entity: offer loans that include negative amortization, interest-only payments, or balloon payments?" There is a note within the question box that says, "If answer is 'Yes', the reporting entity is not eligible for CDFI Certification renewal."

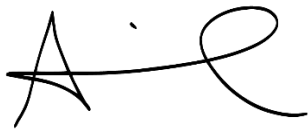
NAFCU reiterates the explanation in its letter submitted in response to the proposed Certification Application, that the CDFI Fund is not a de facto regulator of CDFIs and should defer to certified CDFIs' prudential regulators regarding what products should and should not be offered to consumers. NAFCU discourages the CDFI Fund from decertifying CDFIs based on their product and service offerings when, by definition, CDFIs are tasked with developing their communities through financial services. The stated purpose of CDFIs is to help those consumers that are underserved and not the model borrower. This disqualification contradicts the mission statement of CDFIs. More importantly, NAFCU has already seen CDFIs experience decertification without an

opportunity to cure deficiencies. The proposal to essentially regulate the products and services will likely only increase the amount of such abrupt decertifications. NAFCU urges the CDFI Fund to issue notices as soon as possible to notify institutions of a potential decertification and implement a mandatory cure period for all CDFIs that are not able to maintain the certification requirements.

### **Conclusion**

Thank you again for the opportunity to comment on this RFC. NAFCU supports the submission of data to ensure that certified CDFIs are fulfilling their mission but discourages unduly burdensome reporting requirements and decertification based on product and service offerings. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2268 or [amoore@nafcu.org](mailto:amoore@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Moore', with a stylized flourish at the end.

Aminah Moore  
Senior Regulatory Affairs Counsel