



October 30, 2015

Amber Kuchar  
Program Manager, CDFI Program and Native Initiatives  
Community Development Financial Institutions Fund  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington DC 20020

Reference: Department of the Treasury  
Community Development Financial Institutions (CDFI) Fund  
12 CFR Part 1805  
RIN 1505-AA92

Subject: **Comments on Interim Rule for CDFI Fund Program**

Dear Ms Kuchar:

The National Federation of Community Development Credit Unions (the Federation) is pleased to submit comments on the new interim rule for the Community Development Financial Institutions (CDFI) Fund.<sup>1</sup>

As a CDFI-certified intermediary, co-founder of the CDFI movement, and a trade association representing more than 200 community development credit unions that serve more than five million residents of low-income and underserved communities across the country, the Federation is deeply committed to strengthening the standards, performance and impact of CDFI credit unions and the CDFI industry as a whole. We believe that the CDFI Program has been essential to the growth and development of the CDFI industry to date, but that a more effective deployment of financial and technical assistance can leverage far greater impact in low-income and underserved communities across the country. To do this, the Federation believes that the CDFI Fund needs to apply revised set of metrics to the selection and reporting process for CDFI financial and technical assistance that cover a comprehensive range of CDFI activities. We recognize that this discussion exceeds the scope of the current requests for comment on the interim rule, but will address this issue in a subsequent letter. Specifically, the Federation will propose a set of metrics that extend beyond the familiar terrain of commercial and real estate lending and enable the CDFI Fund to capture data on the community development impacts of consumer lending, financial services and development services. In the meantime, the Federation would like to offer the following comments on four specific changes in the interim rule.

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<sup>1</sup> Federal Register / Vol. 80, No. 168 / Monday, August 31, 2015 / Rules and Regulations

- 1. Section 1805.201(b)(4), Development Services, A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services.***

This section has been revised to permit Development Services to be offered in conjunction with Financial Services in order to meet the certification requirement. While the Federation applauds this change, we ask that the CDFI Fund integrate this recognition of financial services throughout the CDFI Program. Specifically, we encourage the CDFI Fund to bring the CDFI certification and FA/TA selection processes into alignment with the wording of the interim rule itself. For example, although Section 1805.200(b)(3) states that a CDFI can meet the Target Market requirement for certification “by demonstrating that it provides Financial Products and/or Financial Services” in one or more Target Markets, the current certification application does not allow applicants to provide data on financial services to meet the Target Market requirement. Similarly, although section 1805.300 states that the purpose of CDFI financial assistance is to enhance the ability of recipients to provide “Financial Products, Financial Services, and Development Services,” the current FA/TA application is constructed exclusively around lending (including development services linked to loan products). As discussed further below, the Federation recommends that the CDFI Fund revise the application processes for both certification and financial assistance to recognize the full scope of CDFI activities, including the impact of financial services.

- 2. Section 1805.201(c), Records and Review. The CDFI Fund will review a CDFI’s certification status from time to time, as deemed appropriate by the CDFI Fund, to ensure that it meets the certification requirements of this section, as well as review its organizational capacity, lending activity, community impacts, and such other information that the CDFI Fund deems appropriate. Upon request, a CDFI shall provide such information and documentation to the CDFI Fund as is necessary to undertake such review.***

The Federation believes it is essential that the CDFI Fund conducts periodic reviews to ensure continued compliance with CDFI certification requirements. However, in this section the CDFI Fund also assumes authority to “review...organizational capacity, lending activity, community impacts, and such other information that the CDFI Fund deems appropriate” and requires CDFIs to provide any information deemed necessary for such a review. This clause extends the CDFI Fund’s authority to conduct organizational examinations without limit and far beyond its certification mandate. This sweeping authority is inappropriate for all types of CDFIs, but especially so for regulated entities that already operate in a tightly regulated and closely examined space, subject to a myriad of overlapping regulatory requirements and the ultimate legal responsibility to protect the security and confidentiality of member and client information. The Federation recommends that this section be revised to read as follows:

*“Section 1805.201(c), Records and Review. The CDFI Fund will review a CDFI’s certification status from time to time, as deemed appropriate by the*

*CDFI Fund, to ensure that it meets the certification requirements of this section. Upon request, a CDFI shall provide such information and documentation to the CDFI Fund as is necessary to undertake such reviews. For regulated CDFIs and to the maximum extent possible, the CDFI Fund will first obtain publicly reported financial information from the appropriate regulatory agency before requesting additional information from the CDFI itself.”*

- 3. Section 1805.201(b)(5) Accountability. A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board and/or advisory board(s). An entity applying for CDFI certification must demonstrate that it meets this requirement.**

This section has been revised to require CDFIs to demonstrate accountability to residents of its Target Market strictly through representation on either its governing board or advisory board. The Federation supports this clarifying change to the Accountability rule, but also notes inconsistency in the evaluation of credit union accountability to their CDFI Target Markets. Credit unions are unique among CDFIs, in that they are entirely member owned and member governed. All credit union boards are made up of credit union members who serve as volunteers. Every year credit unions must hold elections for board seats in which all members have a single vote, regardless of how large or how small their account balances.<sup>2</sup> This democratic process ensures that every credit union is a community-governed institution, accountable to all segments of its membership. As a result, CDFI credit unions that predominantly serve CDFI Target Markets are automatically and continuously accountable to their target markets in direct proportion to the representation of each Target Market in the credit union’s membership.

Unfortunately, the CDFI Fund currently recognizes this automatic and direct accountability for only a single Target Market. In other words, if 55% of a credit union’s membership lives in an Investment Area and 55% of members also are African American, the credit union can only claim that the governing board is accountable to one of these target markets, but not both. In annual board elections, credit union members vote – and demand accountability – based on the totality of their interests, including a member’s place of residence, level of income, and demographic characteristics such as race, ethnicity, language or culture. The Federation recommends that credit unions that meet the Target Market requirement for CDFI certification be deemed accountable to their qualified Target Market based on this democratic governance structure.

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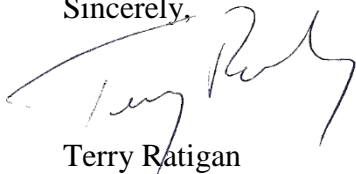
<sup>2</sup> Member deposits in credit unions are called “shares” to convey the cooperative ownership structure that prohibits external shareholders from owning or profiting from the credit union’s operations. But unlike common shares in for-profit enterprises, every credit union member gets a single vote for board elections, regardless of how large or small their share balance in the credit union. One can only imagine how the recent financial history might have been changed if the governing boards of “too big to fail” financial institutions were accountable to their customers on an equally direct, democratic basis.

**4. Section 1805.701(b) has been revised to more accurately reflect the application and selection requirements of the Act as indicated at 12 U.S.C. 4704, 4705, and 4706.**

While the changes to this section closely reflect the requirements of the Act, we continue to maintain that the intent of the Act cannot be fulfilled with a selection system that is overly focused on the relatively small portion of CDFI activities devoted to commercial and real estate lending or development finance. Section 1805.700 requires the CDFI Fund to “ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner,” and that this evaluation “consider the unique characteristics of Applicants that vary by institution type,” but the current system ignores the critical role that CDFI consumer loans and CDFI financial services play in helping low-income individuals and families to protect and build assets. As noted above, the Federation is proposing that the CDFI Program employ a revised set of metrics designed to fit a truly comprehensive business plan, which would enable the CDFI Program to fairly allocate assistance to the strongest applicants in each institutional category. We believe this change would increase the transparency of the selection process and provide all types of CDFIs with clear incentives to strengthen the performance and impact of the CDFI industry as a whole.

Again, many thanks for the invitation to submit these comments. As always, we would welcome the opportunity to discuss our comments and recommendations further at your convenience.

Sincerely,



Terry Ratigan  
National Federation of  
Community Development Credit Unions

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