

November 5, 2020

Ms. Tanya McInnis  
Program Manager, Office of Certification, Compliance Monitoring and Evaluation  
Community Development Financial Institutions (CDFI) Fund  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington DC 20220  
*Submitted via email to ccme@cdfi.treas.gov*

Re: Proposed CDFI Program--Certification Application

The undersigned consumer, civil rights, and housing organizations welcome the CDFI Fund (Fund)'s efforts to more vigorously ensure that the primary mission of any CDFI is to promote community development.

CDFIs are uniquely suited to promote community development and expand financial inclusion. At times, however, we see CDFIs use "financial inclusion" as the central purported justification for permitting irresponsible lending practices, unreasonably high interest rates, and erosion of longstanding consumer protections.

It is becoming difficult to keep track of all the affirmatively harmful financial products and practices being encouraged in recent years in the name of "access to credit" and "financial inclusion" – which in reality exacerbate *exclusion*. Most CDFIs stay away from these harmful products and are true to their mission. But others do not, and at least one CDFI is charging rates as high as 190% APR in the name of financial inclusion. Moreover, in the mortgage space, we are concerned that some CDFI mortgage lenders are using the certification not to promote community development but to promote their ability to avoid the sensible underwriting requirements that apply to most non-CDFI lenders.

High-cost and/or unaffordable indebtedness and default inflict misery of all kinds on borrowers and their families, ultimately leaving them worse off than when they started. Communities of color are targeted and disproportionately harmed by such lending, which exploits and fuels the racial wealth gap.

We urge the Fund to put its imprimatur only on lending practices that, in the spirit of the CDFI mission, carry reasonable interest rates and promote asset building, rather than saddling consumers with high-cost, harmful debt.

**We urge the Fund to establish lending standards that function as clear, bright-line eligibility requirements for CDFI certification or renewal:**

- (1) **a fee-inclusive annual percentage rate (APR) limit of 36%, computed consistent with the current Military Lending Act (MLA) regulations (or lower if required by state law);** and
- (2) **for any mortgages offered, product protections consistent with the qualified mortgage (QM) statutory protections:** (a) no negative amortization, interest-only payments, or balloon payments; (b) adjustable rate mortgages underwritten at the maximum rate in the first five years; (c) original maximum term of 30 years; and 4) total points and fees generally not exceeding three percent of the loan amount. These product protections will help ensure responsible mortgage lending while allowing innovation in underwriting that may benefit communities that CDFIs serve.

For small loans, the 36% fee-inclusive rate cap under the MLA is a widely accepted dividing line between affordable loans and high-cost ones. For larger loans, most states impose lower rate limits: a median of 31% APR including fees for a \$2,000 loan and a median of 25% APR for a \$10,000 loan. CDFIs should be encouraged to keep rates at these limits or well below on these larger loans. But a fee-inclusive 36% APR eligibility requirement provides a clear, bright-line standard, rooted in federal precedent.

A bright line requirement is far preferable to the Fund's current proposal to make the interest rate a benchmark that triggers higher scrutiny. First, a bright line limit of 36% MAPR is appropriate to fulfill the statutory objective. It makes little sense to provide a federal imprimatur, and often subsidy, for lenders making loans so expensive that Congress has prohibited them for our nation's servicemembers or that are illegal in most states.<sup>1</sup> Second, a clear eligibility requirement avoids charging the Fund with policing whether or not high-cost lenders may nonetheless merit CDFI certification. As we fail to think of such an entity, expending Fund resources on this task is both unnecessary and inefficient.

We further urge the Fund to **require that lenders assess borrowers' ability-to-repay and monitor other lending metrics like defaults, refinancings, debt collection practices, and compliance with fair lending laws.** For mortgage loans, although CDFIs are exempt by regulation from the ability-to-repay provisions of the Dodd-Frank Act, CDFIs should still demonstrate that they consider and verify borrower debts, income, and assets.

In addition, we urge the Fund to **establish an eligibility requirement that CDFIs charge no more than six overdraft fees in a rolling 12 months,** consistent with the FDIC's 2010 guidance addressing overdraft programs.

We also strongly support the Fund's proposal to **require that the primary mission test be applied as a whole to non-depository parents, affiliates, and subsidiaries engaged in financing.**

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<sup>1</sup> An exception could be provided for federal credit unions whose only product that exceeds these rates is payday alternative loans (PALs).

Sincerely,

National groups

Americans for Financial Reform Education Fund  
Center for Responsible Lending  
Consumer Action  
Consumer Federation of America  
The Leadership Conference on Civil and Human Rights  
NAACP  
National Consumer Law Center (on behalf of its low income clients)  
National Fair Housing Alliance  
National NeighborWorks Association  
National Urban League

State-based groups

Alaska PIRG  
Arkansans Against Abusive Payday Lending  
Center for Economic Integrity (AZ)  
Delaware Community Reinvestment Action Council, Inc.  
New Economy Project (NY)  
New Georgia Project  
New Jersey Citizen Action  
SC Appleseed Legal Justice Center  
Texas Appleseed  
Virginia Citizens Consumer Council  
Voice-OKC (OK)  
Woodstock Institute (Illinois)