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*Via Electronic Submission*

December 5, 2022

Spencer W. Clark  
PRA Clearance Officer  
U.S. Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

**RE:** CDFI Certification Application [OMB Control Number: 1559-0028]

Dear Mr. Clark:

The Independent Community Bankers of America ("ICBA")<sup>1</sup> welcomes the opportunity to provide comment in response to the above referenced clearance request for information collection under the Paperwork Reduction Act ("PRA"), regarding the Community Development Financial Institutions ("CDFI") Fund's ("Fund") revised application. ICBA has two concerns with this clearance request.

First and substantively, ICBA strongly believes that the Fund's revisions will irreversibly harm existing CDFI banks and prevent other banks from seeking the certification. The second concern is procedural, but no less important. ICBA believes that the Fund has only provided a perfunctory purpose for changing the information collection, possibly in violation of administrative laws that the Fund is required to follow. As such, the Office of Information and Regulatory Affairs ("OIRA") should decline the Fund's information clearance request clearance.

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<sup>1</sup> *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 roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly \$5.9 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 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](http://www.icba.org).*

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## Background

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.” Then, in May of 2020, the Fund proposed revisions to its policies and procedures, seeking public comment on those proposed revisions. The Fund proposed drastic changes to four of the seven criteria to certify as a CDFI,<sup>2</sup> contending these changes were necessary to achieve five policy objectives in its strategic goals<sup>3</sup> and ensure a CDFI’s commitment to a community development mission. Now, the Fund has released a preview of its final revisions as it seeks PRA clearance from OIRA.

## Comments

### **The Fund is moving the goal posts on CDFI certification**

The most concerning revision to the application is the dramatic expansion of information collected for the “primary mission” test. To ensure that CDFIs offer responsible financial services and products, the application asks a series of questions related to every financial product and service offered by the applicant, including several questions on the annualized rate of interest and other fees charged to a borrower using the Military Annual Percentage Rate (“MAPR”) and whether the CDFI charges fees associated with Non-Sufficient Funds (“NSF”), overdraft, or other triggering events.

The Fund contends that this information is necessary to determine whether a CDFI/applicant is offering “responsible” products, which intrinsically requires the fund to perform a qualitative test and assess whether a product or service is “good” or “bad.” The revised Primary Mission test also enumerates several characteristics, which, if offered by the CDFI/applicant, automatically terminates the ability to be certified a CDFI. For example, the revised application will bar CDFIs from making mortgages that contain certain features, including interest only loans, balloon loans, or terms that exceed 30 years.

ICBA believes that these changes are unduly burdensome and risky to the safety and soundness of CDFIs that are prohibited from enacting risk mitigating measures, such as risk-based pricing or alternative product structures. These changes create undue burden of requiring banks to

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<sup>2</sup> Certification requires that the CDFI/applicant (1) is a legal entity, (2) has a primary mission of promoting community development, (3) is a financing entity, (4) primarily serves one or more target markets, (5) provides development services, (6) maintain accountability to its defined target market, and (7) is a non-government entity.

<sup>3</sup> (1) Protect the CDFI brand; (2) Support the growth and reach of CDFIs, especially as it relates to their ability to innovate and take advantage of new technologies; (3) Continue to foster a diversity of CDFI types, activities, and geographies; (4) Minimize burden on CDFIs, while improving data quality and collection methods; and (5) Promote efficiency for CDFI Fund staff in rendering CDFI Certification determinations.

provide a significant increase of information. Implementing such wholesale revisions would be unfair to the hundreds of community bank CDFIs that will have to endure significant costs and burden simply to maintain their certification with no additional benefit.

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. Otherwise, the result is an exercise that prioritizes form over function.

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.

Additionally, fees charged by CDFIs are often simply required to offset the costs associated with transactional products. The de minimis fees assessed are intended to provide some ability to recoup the losses that have incurred, including staff time for deposit operations staff, branch staff, BSA/AML staff, compliance staff, accounting staff, among others that must be notified and take action triggered by a “bad check” having been deposited, and in accordance with bank policy and procedures. Processing dishonored checks is not costless for banks, and if they are not permitted to recoup their costs in the form of returned deposited item fees, they may be less likely to offer checking services, including free checking. In short, they will replace fees for returned deposited items with an annual fee or higher account minimums, which will harm customers who do not deposit dishonored checks.

The proposal does not attend to safety and soundness concerns with which community banks must contend. 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.

### **Unexamined impact of substantial changes to certification process**

Further, the consequences of any missteps that the Fund might make by implementing these changes have only increased in the intervening two years since the Fund initially proposed the

revised policies and procedures. Most dire, changes to the application and certification threaten to upend President Biden’s plans to infuse more than \$8 billion into distressed communities through the Emergency Capital Investment Program (“ECIP”). If CDFIs lose their certification due to the changes contemplated by the Fund, then it is uncertain whether the community banks awarded funds through ECIP will continue to be eligible for capital or whether the event would cause a technical default, requiring the return of those funds to Treasury.

Despite the potential for these grave consequences, the Fund has yet to explore, or at least publish, the overall impact on communities whose local community banks lose ECIP funds due to revocation of CDFI status. More related to OIRA’s current endeavor in assessing PRA clearance, it is not apparent whether the Fund has considered the additional information collected through ECIP recipients and whether such information is redundant.

### **Elements of due process have not been adequately met**

Just as important as the substance of a rulemaking, the process and procedure used to promulgate a rule deserve due scrutiny. ICBA is concerned that the Fund’s process continues to be deficient. Specifically, the Fund has yet to adequately establish a purpose for these changes.

Though the Fund should be commended for the frequency of communication and numerous opportunities to comment, the Fund has only provided perfunctory justification, explaining that these changes are needed to ensure that policies and procedures “continue to meet the statutory and regulatory requirements, are responsive to the evolving nature of the CDFI industry, and protect government resources.”<sup>4</sup>

The Fund provides no analysis of statutory changes that demand revision. There has been no establishment of how the industry has “evolved” and why such evolution warrants revision. And finally, the Fund has offered no evidence of fraud or abuse that could raise alarm for the prudent use of government resources.

Goals to “protect the CDFI brand” by citing the growth and size of the CDFI industry is not considered sufficient evidence to justify such wholesale revisions, especially considering the dramatic consequences of these changes on viability of CDFI community banks. Mere growth of an industry should not equate to a threat to the brand. Without contextualizing justification, the Fund is creating artificial scarcity.

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<sup>4</sup> 85 Fed. Reg. 27275 (May 7, 2020), at 27276.

It is imperative for the Fund to explain what external events are precipitating these changes. Absent this discussion, the Fund risks the classification of these changes as arbitrary. As such, ICBA strongly urges OIRA to remand the clearance request and require the Fund to establish a record that demonstrates a need for revision.

### **Conclusion**

If the purpose of the Fund's revisions 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 existing 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.

In conclusion, 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, Regulatory Counsel