Indiana Credit Union League
The association of Indiana credit unions

December 5, 2022

Jodie Harris
Director
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Notice and Request for Comment on CDFI Certification Application (OMB Control No. 1559-0028)

Dear Director Harris:

The Indiana Credit Union League (ICUL) appreciates the opportunity to respond to the Notice and Request for Public Comment issued by the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) regarding the Certified Community Development Financial Institutions (CDFIs) Certification Application. The ICUL member credit unions represent 99% of assets and members of Indiana's credit unions, with those memberships totaling more than 2.8 million consumers. Currently, eight Indiana credit unions are CDFIs and the ICUL regularly engages with others that are interested in the process of becoming CDFIs.

While we recognize that the CDFI Fund has taken steps to improve the CDFI certification process with this proposed application and agreement, we are deeply concerned that there are numerous new provisions and standards being proposed that could essentially eliminate credit unions from serving as CDFIs. Of course, this is quite alarming considering the tremendous role that CDFI credit unions are playing today in communities across the country. As not-for-profit, member-owned, financial cooperatives, all credit unions are focused solely on serving their members and their communities, including those who are underserved by other financial services providers. CDFI credit unions go even further to focus their products and services to those who are most in need and play a critical role in helping people achieve financial wellbeing and escape the pitfalls of predatory financial services providers. Many of the changes being proposed in the certification application and agreement process fail to consider the unique nature of credit unions and inexplicably threaten their ability to continue their vital role. Our comment letter does not seek to address all the serious problems with the proposal but will address several areas of our greatest concern.

<u>Responsible Financing Practices Requirements</u>
As the CDFI Fund states in the proposed application, we strongly agree that entities seeking CDFI status should "provide financial products and financial services in a way that does not harm consumers" and that CDFI's should "practice transparency, fair collections, and be in compliance with federal, state, and local laws." However, we strongly disagree with many of the assertions that the CDFI Fund makes about what types of products and services could disqualify a credit union from CDFI status and urge the CDFI Fund to reconsider its approach to evaluating these credit union applicants in this area.

- **36 percent rate cap and application of the Military Annual Percentage Rate (MAPR)**. In most cases, we agree that loans that allow for an annual percentage rate (APR) exceeding 36 percent are not in keeping with the purposes of a CDFI. However, it also is the case that a critical product that CDFI credit unions often provide are payday alternative loans that are specifically designed to help consumers escape predatory lenders. For federal credit unions, the National Credit Union Administration (NCUA) has created a regulatory framework for payday alternative loans (PALs) that allows federal credit unions to offer small-dollar, short-term loans that are specifically designed to serve as a safe alternative to predatory payday loans. The structure of these loans allows a federal credit union to charge up to 28 percent APR. The regulation permits a federal credit union to charge a reasonable application fee (not to exceed $20) to cover costs associated with processing the loan and this fee is not factored into the 28 percent rate cap. In some cases, this fee could push the loan's APR above 36 percent potentially risking disqualification from CDFI status for credit unions offering these important loans. State consumer credit law in Indiana also provides state-chartered credit unions with the ability to offer small-dollar, short-term payday alternative loans that could exceed 36 percent APR. In many cases, CDFI credit unions rely on the ability to make these highly regulated payday alternative loans to serve elements of their target markets and we recommend that the CDFI Fund application should exempt these loans from the question regarding the 36 percent rate cap.

  We also disagree that MAPR should be the base APR calculation for all consumer loans regardless of borrower status and CDFIs should not be required to report loan level MAPRs in the Transaction Level Report (TLR). Requiring CDFI applicants to recalculate all rates from the rates currently being charged on a loan to an MAPR would be a serious burden on any CDFI applicant. Credit union loan originating and servicing systems are structured today to meet disclosure requirements of the Truth in Lending Act and are not set up to make the complex MAPR calculations across the full range of their loan product offerings. Truth in Lending requirements offer consumers strong, time-tested protections and information and should continue to be the standard for loans that are not already subject to the Military Lending Act. Requiring MAPR for CDFI credit unions would be a tremendous, unnecessary burden and would likely bar many credit unions from CDFI status.

- **Ability to Repay**. The proposed application process appears to require a CDFI to consider a borrower's ability to repay a loan in every situation. While this is an important component for making sure a borrower is taking out the appropriate loan in most cases, there are times when it is to the benefit of the consumer or small business for a lender to use other factors to make a loan decision rather than a strict ability to repay standard. The payday loan alternative loans discussed in our previous section are rarely based on a strict ability to repay standard and are instead designed to meet a borrower's immediate, often emergency, need. Additionally, current regulatory standards that expressly allow an exemption from the ability to repay rule with respect to mortgage financing right now allows CDFIs the flexibility to work with low-income borrowers to find lending options that can improve their financial wellbeing. Imposing a strict ability to repay model on all loan products would take away critically important options that CDFIs use today to serve their target markets.

- **Mortgage product restrictions**. The proposed application lists several mortgage product features that would be automatically disqualifying for applicants seeking CDFI status. Again, we believe that this approach is short-sighted and would unnecessarily disqualify many credit unions from CDFI status. Some of the automatically disqualifying features include mortgages with balloon payments, interest-only payments, original maximum terms longer than 30 years, failure to verify the income of the borrower, and others. In the case of balloon payments, the Consumer Financial Protection Bureau's (CFPB) Qualified Mortgage (QM) rule allows for a balloon-payment QM if it is responsibly designed. This recognizes that there are instances where a balloon-payment loan can fit well in certain circumstances and be designed in a way that does not harm consumers. In other circumstances, interest-only loans, loans with terms longer than 30 years, and loans without income verification can be important tools that credit unions can use to help serve consumers who are underserved and not able to qualify for a standard loan. Even though these loans often are considered non-conforming and cannot be sold on the secondary market, credit unions are willing to take the risk of holding these loans in their portfolios so that they can better serve their members and communities. The CDFI Fund should not prohibit CDFIs, especially those that are already well-regulated, from offering affordable, well-underwritten mortgages, no matter their structure. If a regulated, examined institution's mortgage lending is compliant with CFPB rules, then that should be sufficient for the CDFI Fund.

- **Overdraft Programs and Nonsufficient Funds (NSF) Fees**. The proposed application asks depositories to provide information on any overdraft or NSF fees they charge, but there are no clear guidelines that describe an acceptable product and no explanation of how the information collected will be evaluated and its potential impact on certification. If the CDFI Fund's request for information about overdraft practices is solely to ensure that institutions comply with existing regulations and regulatory guidance, the application should ask that specific question. However, if the Fund intends to make determinations about the quality of an institution's overdraft and NSF policies and practices that will influence whether the institution will be eligible for CDFI certification, the CDFI Fund should affirmatively identify the best practices it expects to see, above and beyond compliance with regulatory requirements. Without transparent and consistent standards, institutions will be denied the opportunity to adjust their overdraft and NSF practices to comply with the CDFI certification requirements.

- **Statutory liens**. In two places on the proposed application, CDFI applicants are asked if certain loans include a "leveraged payment mechanism" and the application indicates that the existence of such a mechanism would automatically be disqualifying. This is a significant problem for CDFI credit unions because the Federal Credit Union Act and the Indiana State Credit Union Act expressly provide a statutory lien (which meets the definition of a "leveraged payment mechanism") that is applicable to all loans. The lien can be established for all loans to the member by providing notice at account opening or through notice given regarding a bylaw amendment or policy. The statutory lien allows a credit union to debit funds in an account and apply them to outstanding financing obligations due and payable to the credit union when a member is in default. Therefore, regardless of whether a credit union may use the statutory lien, many credit unions do have a leveraged payment mechanism on all their loans as a matter of policy and their bylaws. Answering "Yes" to this question should not automatically eliminate these credit unions from consideration for CDFI certification. The CDFI Fund should remove this prohibition or expressly exempt any credit union lien on shares from the definition of a leveraged payment mechanism.

- **Overreach of data collection**. The proposed application appears to require depository institutions to provide detailed information on all checking or share account features that they offer. This would be an enormous undertaking and it is not clear what purpose all that information would serve. The CDFI Fund should only seek information on pertinent financial services an institution offers rather than information on all financial services it offers.

Accountability

We recognize that to be a CDFI, a credit union "must maintain accountability to residents of its Investment Area or Targeted Population, through representation by individuals on its governing board and/or advisory boards." The proposed application includes examples of how accountability can be achieved by a credit union, but we are deeply concerned that the CDFI Fund is proposing to abandon the current credit union special accountability provision that provided that if 50 percent of a credit union's loans are to a single target market, the CDFI Fund recognizes that a credit union's democratically elected board creates automatic accountability to its target market. We do not understand why the CDFI Fund proposes to eliminate this simple and self-evident standard and instead create a more burdensome, complicated accountability process. Credit unions are not-for-profit financial cooperatives controlled by a democratically elected board of directors. Because credit union boards are democratically elected, they are inherently accountable to their membership. Credit union members are each entitled to one vote, regardless of the number of shares held at the credit union, the amount of funds on deposit, or the amount of loans they have taken. This creates a strong level of accountability that is already unique among CDFIs. A credit union membership that is dissatisfied with a CDFI credit union's commitment to its mission or activities focused on its target market has the option to change out its governing board through the election process. The CDFI Fund should recognize credit unions as inherently accountable and exempt them from the accountability test, but, failing that, should reinstate the current stand-alone option that states if 50 percent of a credit union's membership is determined to be members of the credit union's target market, then it is inherently accountable.

Additionally, the proposed application further fails to acknowledge the nature of credit unions when its Financial Interest Policy states that governing board members with "active loan products" cannot demonstrate accountability to their CDFI target market. This is a tremendous misunderstanding of the benefits of the cooperative financial model as well as the significant regulatory protections that are built into the credit union framework. Credit union board members must themselves be members of the credit union and can be expected to use the credit union's financial products on equal footing as all other members. The potential for conflicts of interest is addressed by specific provisions in the Federal Credit Union Act and in the Indiana State Credit Union Act as well as in each credit union's bylaws that typically require the "non-preferential treatment" of credit union officials and members of their immediate family. These provisions are further strengthened through rigorous regulatory review as a standard part of supervisory examinations. The proposed application's Financial Interest Policy is particularly unfair to board members who have low incomes or who are members of targeted populations who may rely on their credit unions to meet their transaction account and borrowing needs. Barring these members from being considered accountable to their communities because they use their credit unions' services in the same way as the broader credit union membership they represent decreases, rather than increases the accountability of those boards. CDFI credit unions and other regulated depositories should be exempt from the Financial Interest Policy's provision related to "active loan products," because the risk of conflicted board members is fully mitigated by regulation and supervision.

Merger-Related Terminations

The proposed application notes that CDFI certification status cannot be transferred to another entity and that a surviving entity, even if it is a CDFI, must file a new application and be approved. This is deeply concerning for credit unions. CDFI status for a credit union results in significant structural and regulatory mechanisms (funding, regulatory exemptions, technical assistance opportunities, etc.) that are vital to the management and strategic planning of the credit union. If a CDFI credit union were to suddenly loose its CDFI certification status, it could have harmful and potentially destabilizing consequences for the credit union. According to the proposed application, this could even happen if two CDFI credit unions were to merge resulting in both losing their certification until a new application could be filed and approved. Instead of automatic termination, we recommend that the CDFI Fund create a process where a surviving entity can indicate that it intends to continue or obtain CDFI certification status and be allowed to proceed into a "cure" status with 180 days to reapply for the certification.

Conclusion

CDFI credit unions play a critical role in their communities and the CDFI certification process is extremely important. We are very concerned that many of the changes being proposed in the application process will have a severely negative impact on credit unions' ability to continue serving as CDFIs or to become a CDFI in the future. We appreciate the opportunity to comment, and we urge the CDFI Fund to make these and other changes. If you have any questions about our letter, please do not hesitate to give me a call at (317) 594-5320.

Sincerely,

John McKenzie

John McKenzie, President
Indiana Credit Union League