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National Association of Federally-Insured Credit Unions

December 19, 2022

Michelle Dickens
Program Manager
Office of Certification Policy and Evaluation
CDFI Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: Request for Comment Regarding CDFI Target Market Assessment Methodologies (Docket No. 2022-22767)

Dear Ms. Dickens:

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 preapproved Target Market (TM) assessment methodologies. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 133 million consumers with personal and small business financial service products. NAFCU generally supports the idea of having preapproved assessment methodologies for transparency and consistency, but the specifics of these proposed methodologies may cause issues related to fair lending laws. NAFCU applauds the CDFI Fund for deciding to include persons with disabilities as an Other Targeted Population (OTP) as well as eliminating the geographic boundaries of most TMs in its proposal. NAFCU urges the CDFI Fund to include the use of proxy data in its preapproved assessment methodologies for all TMs and to be open to generously approving and publishing methodologies that applicants or certified CDFIs present that offer a simpler means of capturing the populations they are serving.

General Comments

A certified CDFI is required to serve an investment area or targeted population by statute.[1] Specifically, an applicant must direct at least 60 percent of its financial product activities to one or more approved TMs. There are three types of TMs: OTPs, Investment Areas (IA), and Low-Income Targeted Populations (LITP). An LITP is defined as a low-income population for a specified geographic unit containing individuals whose family income (adjusted for family size) is up to 80 percent of the area median family income for metropolitan areas or up to 80 percent of the greater of the area median family income or the statewide nonmetropolitan area median family

[1] 12 CFR 1805.201(b)(3).

income for non-metropolitan areas. OTP-qualifying populations are identified as African American; Hispanic American; Native American; Native Alaskan, residing in Alaska; Native Hawaiian, residing in Hawaii; and Other Pacific Islander, residing in other Pacific Islands; along with ADA-qualifying Americans being added as a part of this proposal.

Under the current CDFI certification policies, applicants must seek approval for each assessment methodology they have used and intend to use to confirm financing activity to their identified TMs. This proposal states that only those TM assessment methodologies that have been preapproved by the CDFI Fund may be used when providing TM data. The CDFI Fund intends to update the preapproved list as appropriate, so that any newly approved methodologies may be available to other applicants and certified CDFIs as well. Failure to use an approved assessment methodology may result in the termination of a certified CDFI's certification.

NAFCU appreciates the CDFI Fund eliminating the geographic boundaries of most TMs in its proposal. NAFCU's CDFI members have expressed in the past that the map containing the TM geographic boundaries would constantly change, making it difficult for CDFIs to maintain service to their TMs. NAFCU supports the proposed certification requirements' inclusion of all loans made to any qualified borrower, no matter where they live, in the 60 percent goal. NAFCU further supports the CDFI Fund measuring an applicant's TM financing activity over the most recently completed fiscal year only, eliminating the requirement that the applicant also provides data on its year-to-date activity.

NAFCU urges the CDFI Fund to follow the Administrative Procedure Act (APA) when issuing new rules. One of the purposes of the APA is to provide for public participation in the rulemaking process.[2] Changes such as the methodologies used to assess service to TMs would benefit from input from the public and those who will be impacted by the proposal, from the beginning of the process. Although NAFCU appreciates the release of this RFC, the CDFI Fund should engage in notice and comment rulemaking and issue a proposed rule to solicit further feedback before moving ahead with implementing any changes that will certainly have a substantial impact on the universe of institutions that are eligible for certification as a CDFI.

Other Targeted Populations

The CDFI Fund's proposed preapproved methodologies for the assessment of the various OTPs vary based on the population type. NAFCU would like to point out difficulties with self-reporting or visual assessment in person or via government-issued photo identification, which are the preapproved methodologies for African American and Hispanic OTPs. For self-reporting to be possible, the applicant or certified CDFI will be required to ask a question about race and ethnicity on the application for services, products, and/or membership. Lenders are prohibited, under the Equal Credit Opportunity Act and Regulation B, which protects applicants in a credit transaction from discrimination, from inquiring about the race of a credit applicant with a very limited

[2] 5 U.S. Code § 553.

number of circumstances providing exceptions.[3] The other option for self-reporting would be for the certified CDFI or applicant to ask the question on an application for financial products or services. This may be burdensome for the entity, especially smaller credit unions because it would require them to change the application of products and services they are already offering. Additionally, this may impact whether an individual turns to a CDFI for their financial service needs because they do not want to answer a race question or more importantly do business with an institution that would even ask such a question.

While the second assessment methodology is like that used for the Home Mortgage Disclosure Act (HMDA), it may also present difficulties because many mortgage applications occur over the phone or online, with the applicant never stepping foot into a physical location. This presents more of a burden than it does for HMDA compliance because HMDA is simply for reporting purposes while this assessment will either help or hinder an applicant or certified CDFI from obtaining or maintaining its certification. NAFCU recommends that the CDFI Fund allow the use of proxy data for race and ethnicity; this would allow loans made in any census tract that contains the specific population representation at 70 percent or greater to qualify toward that OTP. NAFCU urges the CDFI Fund to be open to generously approving and publishing methodologies that applicants or certified CDFIs present a simpler means of capturing the populations they are serving.

NAFCU applauds the CDFI Fund for deciding to include persons with disabilities as an OTP. This addition expands the pool of qualified borrowers and promotes diversity, equity, and inclusion, helping CDFIs to meet their 60 percent goal. NAFCU would also like to point out some difficulties with the preapproved assessment methodologies for the OTP of people with disabilities. One of the assessment methodologies is a visual observation, which may present difficulties because not all disabilities are visible to an observer, such as mental health disorders. NAFCU discourages the CDFI Fund from requiring verifying documentation if a member/customer self-reports that they are disabled. Additionally, NAFCU recommends that the CDFI Fund include receiving a Social Security Disability benefit as an income source in their account at the institution as an acceptable assessment methodology.

Low Income Targeted Populations

The proposal includes two preapproved assessment methodologies for an LITP TM, the first of which is collecting income data and primary residence or business location documentation from the individual, owner, or end-user and assessing low-income status via a comparison of family income to the Department of Housing and Urban Development's Income Limits for the relevant family size and local geography. The second methodology is using preapproved programmatic proxies. The first methodology presents difficulties to financial institutions because it is very uncommon for a loan applicant to include the income data for their entire family unless those

[3] 12 CFR 1002.5(b).

family members are applicants for the loan. Without collecting this data, the proposed TM assessment methodology will require the lender to assume that the household size for that applicant is one. This assumption will disqualify the majority of an applicant's or certified CDFI's lending from the LITP TM benchmark because an individual's income for a family size of one is viewed differently than that same income for a family size of four. For example, in Washington-Arlington-Alexandria, DC-VA-MD a yearly income of $70,000 for a family size of 1 is not considered low income but for a family size of two or more, it is.[4]

One NAFCU member reported that this proposed methodology would disqualify 40 percent of their lending, which would disqualify them from future CDFI certification. This staggering figure highlights that the proposed methodology is a solution in search of a problem, and it will have massive impacts on the institutions that are serving communities in need and want to continue to do so. Should these methodologies be implemented, fewer credit unions and community lenders would qualify to obtain CDFI certification, reducing critical funding sources for these institutions and the communities they serve.

Ultimately, the individuals in those communities will be most impacted with fewer opportunities for access to credit and reduced options for products and services – an unintended consequence that may have devastating results for the prosperity of these communities and the ability of community lenders to help do their part in eliminating the racial wealth gap, among other systemic issues. NAFCU recommends that the CDFI Fund preapprove an assessment methodology that allows the median family size of the borrower's census tract to be used.

Conclusion

NAFCU appreciates the opportunity to comment on the proposed preapproved assessment methodologies to satisfy the requirement that 60 percent of an applicant's financial product activities are directed to one or more approved TMs. NAFCU applauds the CDFI Fund for including people with disabilities as an OTP. NAFCU discourages the CDFI Fund from limiting applicants or certified CDFIs to using assessment methodologies that violate fair lending laws and may be discriminatory or offensive to the populations that may need the services of a CDFI the most.

Finally, NAFCU also urges the CDFI Fund to include the use of proxy data in its preapproved assessment methodologies for all TMs and be open to generously approving and publishing methodologies that applicants or certified CDFIs present that are less difficult for them to capture the populations they are serving.

Thank you again for the opportunity to comment on this RFC. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2268 or amoore@nafcu.org.

[4] Median Area Income Limits (June 15, 2022). https://dhcd.virginia.gov/sites/default/files/Docx/dpa/median-area-income-limits.pdf

Sincerely,

Aminah Moore
Senior Regulatory Affairs Counsel