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January 27, 2023

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

Re: Annual Certification and Data Collection Report Form and the abbreviated Transaction Level Report (OMB Control Number: 1559-0046; Document Citation: 87 FR 76541)

Dear Director Harris and Treasury/CDFI Fund staff:

The Native CDFI Network (NCN), the only national membership organization solely dedicated to serving and supporting Native community development financial institutions (CDFIs), welcomes this opportunity to provide comment on the [Annual Certification and Data Collection Report Form and the abbreviated Transaction Level Report](#) (OMB Control Number: 1559-0046; Document Citation: 87 FR 76541). NCN's comments were developed through extensive consultation with and input from NCN's member Native CDFIs and other key Indian Country stakeholders. The comments are formally supported by the XX co-signatory organizations listed at the end of this document and build upon the formal comments NCN recently submitted on the [CDFI Certification Application](#) and [Target Market Assessment Methodologies](#) (TMAMs).

The Vital Role Native CDFIs Play

As the CDFI Fund explains on its website, Native CDFIs' origins can be traced to the 1994 Congressional legislation authorizing the Fund's creation, which contained among its provisions the mandating of a study examining lending and investment practices in Native communities.¹ Titled the Native American Lending Study, the study identified 17 major barriers to investment in Indian Country, and "affirmed the importance of developing Native CDFIs to play a key role in the broader effort to lead Native Communities into the nation's economic mainstream."²

In the two decades since the study's release, Native CDFIs have proven themselves vital engines for fueling the growth of healthy, vibrant Native economies and communities. In the CDFI Fund's own words, Native CDFIs are "an important part of the CDFI Fund's mission to expand the capacity of financial institutions to provide credit, capital, and financial services to underserved populations and communities in the United States," and they are making a "considerable impact" by "helping to transform their communities. They are creating businesses and jobs in places that desperately need them. They are providing personal financial education and business training to persons who have been excluded from our nation's economic mainstream. They are helping to change the lives of the people they serve."³ In short, Native

¹ <https://www.cdfifund.gov/programs-training/programs/native-initiatives>

² https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi7205_fs_ni_updatedfeb20.pdf

³ <https://www.cdfifund.gov/sites/cdfi/files/documents/native-american-strategic-plan.pdf>, PDF p. 3.

CDFIs epitomize what the CDFI Fund sees as the hallmark for CDFI certification: “those working at the margins and beyond to consciously and deliberately make impact.”⁴

Despite the extraordinary economic progress certified and emerging Native CDFIs are cultivating across Indian Country through their deep knowledge of tribal nations and tribal trust lands as well as their intimate understanding of the unique needs of the communities they serve and the customized programs and products they create to address those needs, there still exist significant unmet needs for capital, credit, training, technical assistance, and financial capability building across Native communities. Simply put, as Treasurer of the United States Lynn Malerba declared at NCN’s Annual Policy and Capacity Building Summit in December 2022, “We need more Native CDFIs, not fewer.”⁵ NCN wholeheartedly agrees – Indian Country needs *more* Native CDFIs that can achieve and retain Treasury certification and the access to capital and credit that certification unlocks for them, *not less*. While the overall number of certified CDFIs has grown exponentially from less than 200 in 1997 to more than 1,400 institutions in 2022 – which the CDFI Fund cites as a major reason for the timing and nature of the proposed changes to the CDFI Certification Application and related policies like the Annual Certification and Data Collection Report Form (ACR) and Certification Transaction Level Report (CTLR) – Indian Country has experienced only modest growth, with the number of certified Native CDFIs growing from 50 in 2008 to just 64 currently.⁶ This despite the fact that there are 574 federally recognized tribal nations spread across 36 states.

NCN’s Position on the [Proposed Changes](#) to the ACR and CTLR

NCN appreciates the CDFI Fund’s stated goal that the revised ACR, new CTLR, and related proposed CDFI Certification changes “attempt both to provide the flexibility necessary for CDFIs to grow and to serve the hardest to reach distressed communities, and to maintain the integrity of what it means to be a Certified CDFI from a mission perspective.”⁷ However, our comprehensive review of the proposed ACR revisions raise many of the same concerns we identified and shared with the CDFI Fund through our comments on the [CDFI Certification Application](#) and [Target Market Assessment Methodologies](#), as many of the troubling changes the CDFI Fund proposes to make are intertwined across the three key components of CDFI Certification: the Application, TMAMs, and ACR. For example, the ACR builds on and is tied to key provisions found in the proposed CDFI Certification Application that Native CDFIs find so damaging (e.g., mortgage loan term limitations, the strategic plan requirement, prohibiting Development Services to be included in the calculation for a predominance of staff time, etc.).

In addition to this general statement of concern, NCN shares the following perspectives with the CDFI Fund on specific aspects of the ACR (we have no comments to make on the CTLR at this time):

ACR Section 1 (CDFI Annual Certification Report Detail): We appreciate and support the CDFI Fund’s proposal to provide certified Native CDFIs extra time (180 days) after Fiscal Year End (FYE) to submit the ACR report, as this will alleviate the burden and time crunch that many Native CDFIs – particularly those with limited staff capacity – currently experience submitting the ACR in accordance with the currently established deadline (90 days). For similar reasons, we also appreciate and support the proposal to allow a three-year period benchmark to meet Target Market deployment requirements (it is currently a one-year period benchmark).

However, building on our objections to the strategic plan requirement that we shared on page 5 of our [CDFI Certification Application](#) comments, we find the proposed requirement to report on annual changes in community development objections as part of a CDFI’s required strategic plan to be onerous and unnecessary.

⁴ <https://www.cdfifund.gov/node/1017926>

⁵ NCN Annual Policy and Capacity Building Summit, Washington, D.C., December 6, 2022.

⁶ <https://www.cdfifund.gov/sites/cdfi/files/documents/native-american-strategic-plan.pdf>, PDF p. 13. In 2008, the CDFI Fund also identified that “more than 60 organizations are at various stages of development and moving toward certification as Native CDFIs” (ibid.). Today, as mentioned above, the number of emerging Native CDFIs is far less.

⁷ <https://www.federalregister.gov/documents/2022/12/14/2022-27142/agency-information-collection-activities-submission-for-omb-review-comment-request-annual>

Additionally, the proposed requirement⁸ to list the specific race/ethnicity and gender of board members and executive staff *independent of Target Market (TM)* is incredibly concerning (see page 2 of our [TMAMs](#) comments for more details). We understand that if a CDFI claims to serve a certain Other Target Population (OTP) TM that there are – and should be – Accountability requirements for board members. However, asking for this information *independent of TM* is inappropriate and likely illegal for an organization to comply with.

Finally, under the proposed Accountability revisions, the requirement to submit to the CDFI Fund an entirely new Organization Board report every time a board member changes will create an undue administrative burden for Native CDFIs, particularly those with boards that have large numbers of members. The composition of Native CDFI boards can change regularly, with members frequently departing and newcomers replacing them. Submitting a new Organization Board report for each such occurrence is an unnecessary, time-consuming, and inefficient use of Native CDFI staff time that is better spent delivering and strengthening services to their clients. To reduce this proposed burden, we instead propose that an entirely new Organization Board report should *only* be required (1) if the board changes in size, or (2) if an Accountable board member is replaced by a person who is not Accountable in the same way as the board member being replaced (e.g., an OTP-Native American is replaced with an Investment Area-Accountable person).

ACR Section 3 (Financial Data Detail): The proposal to require the submission of detailed financial data from CDFIs that are certified but do not have an active Financial Assistance (FA) award is deeply problematic, as it creates an undue administrative burden as well as a significant invasion of privacy for Native CDFIs who may intentionally choose not to apply for and utilize CDFI Fund FA dollars due to the extensive reporting and disclosure requirements associated with these awards. Per CDFI Fund regulations, CDFI certification requirement is independent of financial data being collected in this section and is *not* among the seven requirements to become a certified CDFI. Therefore, CDFIs who wish to gain/maintain certification but not be subject to the extensive reporting and disclosure requirements of FA award recipients should not be required to provide this additional information.

ACR Section 4 (Financial Products Portfolio Breakdown Detail): Simply put, the proposed ACR revision that would require Native CDFIs to provide Affiliate loan data would be onerous. Due to limited resources, their primarily rural locations, and their relatively small TM sizes, Native CDFIs are already stretched thin in terms of staff capacity. Requiring Affiliate loan data to be reported will require the staff of each Native CDFI to add to their already overflowing plates the tracking of this data on an ongoing basis and the monitoring of Affiliates to ensure they are meeting TM requirements at all times. This seems both unfair and unnecessary. Affiliates are *not* Treasury-certified and therefore should not be subjected to comply with Treasury/CDFI Fund regulations that are reserved for Native CDFIs that are Treasury-certified.

ACR Section 5 (Source of Investment Capital Table): Echoing our comments on Section 3 (see above), the proposed revision that would require the submission of the Investment Capital Table for CDFIs that are certified but do not have an active FA award creates an undue burden and an invasion of privacy for Native CDFIs who may intentionally choose not to apply for and utilize CDFI Fund FA dollars due to the extensive reporting and disclosure requirements associated with these awards. As with the Section 3 provision, NCN recommends this proposed requirement be dropped from the revised ACR.

ACR Section 6 (Contributed Operating Revenue Table): As with our comments on Sections 3 and 5 (see above), the proposed revision that would require the submission of a Contributed Operating Table for CDFIs that wish to maintain certification but do not have an active FA award creates an undue burden and an invasion of privacy for Native CDFIs who may intentionally choose not to apply for and utilize CDFI Fund FA dollars due to the extensive reporting and disclosure requirements associated with these awards. This proposed requirement also should be dropped from the revised ACR for these reasons.

⁸ [New Annual Certification and Data Collection Report Form \(cdfifund.gov\)](#), p. 11.

Closing

Based on the issues NCN and its co-signatories raise above, we call upon Treasury and the CDFI Fund to convene a formal listening session on the CDFI Certification Application, TMAMs, and ACR/CTLR with all due haste. This listening session should include Native CDFI leaders, key Treasury and CDFI officials, and high-ranking representatives of other key federal agencies (notably the Department of the Interior and USDA) who have a vested interest in ensuring that federal funding and programs supporting Native CDFIs and Indian Country community and economic development broadly is in coordinated alignment, not direct conflict. This approach to meaningful consultation hopefully will lead to a new CDFI Certification Application, pre-approved TMAMs list, and ACR/CTLR that support Native CDFIs and don't stand in their way.

We appreciate the CDFI Fund's dedication to the work Native CDFIs do, and we look forward to continuing to work with the Fund to ensure that the new ACR/CTLR regulations enhance the ability of Native CDFIs do difference-making work in support of Native communities across the country.

Sincerely,

Pete Upton
Board Chair/Interim CEO, Native CDFI Network
pete@nativecdfi.net

ORGANIZATIONAL CO-SIGNATORIES:

[LIST TBD]