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November 25, 2022

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

CC: Jeff Merkowitz, Senior Advisor, CDFI Fund, [mli@cdfi.treas.gov](mailto:mli@cdfi.treas.gov)

**Re: Public Comment on CDFI Fund [CDFI–2022–0001] - Minority Lending Institution Designation Criteria**

To whom it may concern:

The Native CDFI Network (NCN), the largest and only national membership organization solely dedicated to serving and supporting Native community development financial institutions (CDFIs), welcomes this opportunity to provide comment on the Minority Lending Institution Designation Criteria (CDFI Fund-2022-0001). These comments were developed through extensive consultation with and input from NCN’s member Native CDFIs and other key Indian Country stakeholders.

**The Enduring Importance and Unique Role of Native CDFIs**

As the CDFI Fund explains, 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.<sup>1</sup> 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.”<sup>2</sup>

In the two decades since the study’s release, Native CDFIs have proven themselves effective (yet still significantly under-resourced) engines for fueling the growth of healthy, vibrant Native economies and communities. Where tribal enterprises pursue high-growth investment opportunities, Native CDFIs serve those tribal community members themselves that are typically considered “high-risk.” Native CDFIs have been responsible for sowing the seeds of an emerging, astounding transformation – creating small businesses, jobs, homeowners, and serving as the catalyst for helping to grow local tribal economies from informal cash economies to entrepreneurial and residential markets capable of leveraging a growing asset base to secure reasonably priced investment dollars and economic opportunities long-denied by mainstream financial institutions. Currently, a total of 64 Treasury-certified Native CDFIs – serving rural reservation communities as well as urban Native communities – can be found in 27 states across the country, and there are roughly 20 “emerging” Native CDFIs following closely in their footsteps.

**Native CDFI Certification and the Minority Lending Institution Designation: Treat as One and the Same**

As a blanket answer to several of the 11 questions for which the CDFI Fund seeks comments (notably **Question II. C. 9**), it is NCN’s categorical position that Native CDFIs certified by the Treasury Department in accordance with Treasury’s

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

<sup>2</sup> [https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi7205\\_fs\\_ni\\_updatedfeb20.pdf](https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi7205_fs_ni_updatedfeb20.pdf)

current criteria *should automatically be designated Minority Lending Institutions (MLIs)*. As explained above, certified Native CDFIs by their very nature are fundamentally established, constructed, and committed to primarily serve the needs of underserved Native communities and people; as such, there should be no criteria-based distinction between Native CDFIs and MLIs and the federal government consequently should treat them as one and the same. In short, Native CDFIs inherently exercise exceedingly “high levels of service and accountability”<sup>3</sup> to Native communities and people, who comprise arguably the most capital-starved minority population in the country; treating certified Native CDFIs and MLIs the same will ensure the Fund enacts Congress’s statutory intent to target funds to low- and moderate-income minority communities with “significant unmet capital or financial services needs.”<sup>4</sup>

The CDFI Fund automatically designating certified Native CDFIs as MLIs (if they so choose) is critical for several key reasons, including:

- **Increasing funding to under-resourced Native CDFIs:** NCN acknowledges the Fund’s mention in its Federal Register notice that no federal dollars are attached to “an MLI designation at this time,”<sup>5</sup> but that likely won’t always be the case. Automatically conferring MLI status on certified Native CDFIs will ensure that they will immediately become eligible to access any federal funding that Congress chooses to direct to MLIs in the future. In addition, because the CDFI Fund will include a list of all MLIs on their website, an MLI designation will raise certified Native CDFIs’ visibility and attractiveness among private funders that otherwise wouldn’t readily identify them as worthwhile recipients of their investments. Simply put, certified Native CDFIs should have the same access to funding opportunities that MLIs do.
- **Minimizing Native CDFIs’ administrative burdens:** Formally equating certified Native CDFIs and MLIs also will ensure Native CDFIs don’t have to satisfy two differing sets of qualifying criteria, which would place unnecessary restrictions and additional compliance and reporting burdens on Native CDFIs. Many Native CDFIs operate with minimal staff and don’t possess the administrative bandwidth to take on these additional burdens.
- **Creating an unlevel playing field for Native CDFIs and confusion among potential investors in Native CDFIs:** Creating two sets of designation criteria will create an unlevel playing field for certified Native CDFIs, as some will have the capacity and means to jump through the additional hoops established by the MLI’s distinct compliance and reporting requirements and some won’t. In addition, creating two classes of certified Native CDFIs could potentially sow confusion among potential investors about which certified Native CDFIs are also MLIs and why (or why not).

## Responses to Other Specific Sections/Selected Questions Contained in the CDFI Fund’s Notice

### ***II. B. Financial Products Directed to Minorities and Majority-Minority Census Tracts:***

NCN agrees with the Notice’s designation to accord MLI status to CDFIs that direct “greater than 50% of both the number and dollar volume of its arm’s-length, on-balance sheet Financial Products to Minorities (including minority-owned businesses) or Majority-Minority Census Tracts over the most recently completed 36 months upon initial designation, and on a three-year rolling average over each subsequent, completed fiscal year to maintain the MLI designation.”<sup>6</sup> It opposes raising that percentage, as it would create an undue compliance and reporting burden on certified Native CDFIs, who potentially would have to satisfy two different percentage thresholds to achieve/retain certification and designation.

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<sup>3</sup> <https://www.federalregister.gov/documents/2022/07/28/2022-16143/minority-lending-institution-designation-criteria>

<sup>4</sup> <https://www.cdfifund.gov/news/464>

<sup>5</sup> <https://www.federalregister.gov/documents/2022/07/28/2022-16143/minority-lending-institution-designation-criteria>

<sup>6</sup> <https://www.federalregister.gov/documents/2022/07/28/2022-16143/minority-lending-institution-designation-criteria>

***II. B. 2. The Act requires that an MLI must direct a majority of its financial products “at minorities or majority-minority census tracts or equivalents.” Should the CDFI Fund assess Financial Products delivered to legal entities that are not owned or controlled by Minority individuals to finance projects such as affordable housing, child care centers, charter schools, or health centers that are not located within a Majority-Minority Census Tract but whose end-beneficiaries (e.g., customers, residents, or employees) are members of a Minority population? If yes, how?***

Yes. NCN believes that broadening the MLI designation criteria to include these types of projects will enhance investment in key Indian Country infrastructure that has long been underdeveloped. Should certified Native CDFIs *not* be automatically accorded MLI designation (should they so choose), then counting financial transactions such as this will enhance the ability of certified Native CDFIs to qualify for MLI designation.

***II. C. 1 through 7. Accountability: In addition to the above criteria, the Act requires that an MLI be a CDFI that is recognized as an MDI or meets standards for accountability to minority populations as determined by the CDFI Fund.***

Native CDFIs currently must already satisfy rigorous accountability provisions to achieve/retain Treasury certification, so no additional or differing accountability provisions should be required for certified Native CDFIs to achieve MLI designation. It is important to note that NCN will be submitting formal comments by December 5, 2022 addressing its significant concerns with several of the CDFI Fund’s proposed changes to the accountability provisions for CDFI certification.

***II. C. 9a and 9b. The CDFI Fund is also considering the relationship between the standards for designation as an MLI and those for designation as a Native CDFI. To what extent should the two align? a. Should status as a Native MDI automatically qualify as an accountability criterion for designation as a Native CDFI? b. Should the status as a Native MDI automatically qualify as an accountability criterion if the CDFI also serves other Minority populations?***

As previously stated, NCN unequivocally supports all certified Native CDFIs automatically qualifying as an MLI. However, it is NCN’s position that Minority Depository Institutions (MDIs) that are not certified Native CDFIs should *not* automatically be designated MLIs. Per the FDIC, MDIs are only held to ownership or governing accountability standards, “An MDI may be a federal insured depository institution for which (1) 51 percent or more of the voting stock is owned by minority individuals; or (2) a majority of the board of directors is minority and the community that the institution serves is predominantly minority. Ownership must be by U.S. citizens or permanent legal U.S. residents to be counted in determining minority ownership.”<sup>7</sup> NCN believes that to meet congressional intent and be designated an MLI, lending institutions must also demonstrate that a majority of their lending is dedicated to serving minority populations. The current MDI designation does not ensure this. Accordingly, NCN does not support a Native MDI automatically qualifying as an MLI.

## **Closing**

NCN shares the CDFI Fund’s unerring commitment to creating ample and fair access to capital and resources for Native people, primarily those in low- and moderate-income communities, and it looks forward to continuing to work with the Fund to ensure that the MLI Designation explicitly enhances the ability of Native CDFIs to secure investment capital and do difference-making work in Native communities. We look forward to reviewing and commenting on the Fund’s draft rule defining the MLI Designation when it is released. In the meantime, we welcome any conversations the Fund wishes to have about how the MLI Designation can uplift – and not inhibit – Indian Country community development and asset building.

Sincerely,

Pete Upton  
NCN Board Chair/Interim CEO  
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<sup>7</sup> <https://www.fdic.gov/regulations/resources/minority/mdi.html>