

Ms. Erin McKeivitt  
Acting Certification, Compliance Monitoring and Evaluation Manager  
Community Development Financial Institutions Fund  
U.S. Department of the Treasury  
601 13th Street, NW, Suite 200 South  
Washington, DC 20005

September 27, 2011

Dear Ms. McKeivitt:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on the Community Development Financial Institutions (“CDFI”) Program: Certification/Re-certification Application, in response to the notice published in the *Federal Register* on July 29, 2011. Our comments pertain to the certification process and regulations as well as to the application.

OFN has long been among the strongest and most outspoken supporters of the CDFI Fund, which has leveraged billions of dollars of new investment in our nation’s emerging domestic markets, and we have always viewed the Fund as an important partner in our work. We recognize that much of the Fund’s success derives from its commitment to ensuring that CDFIs are evaluated on performance and recognized as key conduits for federal investment. Maintaining the integrity of the certification process is important to the ongoing success of the CDFI industry and its credibility with public and private investors.

As CDFIs’ success has bred recognition from policymakers, laws and regulation have opened up significant new resources for which CDFI certification is an eligibility criterion. In just the last three years, these include Federal Home Loan Bank System membership, the Small Business Administration Community Advantage Program, the Community Development Capital Initiative, the Small Business Lending Facility, and the CDFI Bond Guarantee Program. These initiatives stemmed from the success and track record of the existing CDFI industry, but will likely draw the attention of new participants. While growing the CDFI field is critical, and, in fact, part of the CDFI Fund’s mission, the appeal of these new resources make it more important than ever to protect the integrity of the Fund’s certification process and to make appropriate distinctions between eligibility and award selections.

It is critical that the Fund uphold standards for certification while at the same time ensuring that certification makes no judgment about a CDFI’s financial soundness. Certification should be descriptive but not confer judgment—it is a statement that an organization operates as a CDFI but not how well. Certification is, at its core, the Fund’s method of determining eligibility for its, and other, programs. CDFI investors have varying priorities and strategies and corresponding obligations for due diligence in determining whether to invest in or partner with a particular CDFI. By the same token, erosion of the meaning of “Treasury certification” has introduced risk into the marketplace as investors mistakenly believe that certification includes an assessment of financial soundness.

OFN’s comments deal with specific aspects of the certification criteria and recommend changes that would ensure a focus on mission-based, finance-led entities; make recommendations for a recertification process; note specific issues to consider when certifying entities for participation in the CDFI Bond Guarantee program; and note concerns about the Fund’s pace in reviewing applications for certification.



## **Certification Application**

The Fund should consider adding the option of an electronic certification application. In addition to streamlining the process, an electronic application would provide the Fund with data captured in such a way that CDFIs could use it for additional purposes and interactions with the Fund. The current paper-only format prevents the Fund from collecting data that could be used for other purposes and requires CDFIs to provide duplicative data as they interact with the Fund on multiple programs or reports. For example, data provided in the Certification application might auto populate a CDFI Financial Assistance, Technical Assistance, Native American CDFI Assistance, or other competitive application the Fund offers; or it might be used for required Community Investment Impact System (CIIS) reports. The data provided in the Certification application/annual reports could also be used to analyze the locations, levels of lending and asset sizes of CDFIs. Without capturing data in an electronic format, the Fund loses the opportunity to prepare even such basic analysis.

## **Certification Criteria: Primary Mission**

In earlier comments to the Fund on the “primary mission” criteria, OFN expressed concern with a 2006 change to the regulations that eliminated the requirement that an applicant and all its affiliates be devoted to community development. We recommend that the Fund return to a requirement that all affiliates be devoted to community development, possibly with a specific and narrow exception for venture capital CDFIs; or require that a parent of any applicant be devoted to community development.

## **Certification Criteria: Financing Entity**

OFN has long advocated that the current “financing entity” test does not accurately reflect the finance-driven strategy of CDFIs and allows organizations that are not financing entities to be certified. The first set of regulations the Fund issued in October 1995 called for an institution’s “predominant business activity” to be the provision of loans and investments. We object particularly to the way the Fund considers “provision of Financial Products, Development Services, and/or other similar financing” (Sec. 1805.201(b)(2)) rather than only financial products; *and* requires that these activities constitute only a plurality of an organization’s activities. Instead, provision of financial products and services should constitute a majority of the CDFI’s activities and financing should be an integral part of the CDFI’s strategy. We urge the Fund to return to a finance-led definition.

## **Certification Criteria: Target Market**

Though the definitions of “Target Market” are generally appropriate, they are based on census data which can be out-of-date and not accurately reflect the current market conditions in some communities. The Fund should ensure that communities suffering from more recent blows to the economy—such as a natural disaster or departure or closure of a major employer—can benefit from the Fund’s programs.

To facilitate CDFIs’ designation of Target Markets, the Fund should upgrade its technology and information systems infrastructure. These upgrades would improve the CDFI Fund mapping system; ensure that CDFIs were using timely and relevant data; and could facilitate CDFIs’ integration of their own data into government datasets.

## **Recertification**



CDFIs should be recertified no more frequently than every three to five years, and then the process should be minimally burdensome—possibly a declaration similar to the Fund’s Certification of Material Events, in which CDFIs certify that there has been no change in their certification criteria.<sup>1</sup>

While certification should make no judgment about a CDFI’s financial soundness, it is appropriate to ensure, during the recertification process, that the organization is an ongoing concern that continues to function as a CDFI. The Fund might ask that CDFIs provide audited financial statements as part of the recertification process. Such a requirement would ensure that CDFIs continue to make loans and investments, but would not prove an additional burden to CDFIs. The Fund would not and should not conduct detailed analysis of such financial statements or use them to draw conclusions about the financial condition of any CDFI, but merely require their submission. Any annual data collection requirement of certified CDFIs with no other reporting relationship to the Fund should be carefully defined and narrowly targeted to basic, easily obtainable information.

In addition, CDFIs that have been rated by OFN’s CDFI Assessment and Ratings System (CARS™) have undergone a rigorous analysis of their mission, financial capacity, and governance.<sup>2</sup> The Fund should use a current satisfactory CARS™ rating as evidence of meeting appropriate certification criteria. OFN welcomes the opportunity to discuss the elements of a CARS™ rating that are substantially similar to certification criteria.

### **Certification and the CDFI Bond Guarantee Program**

The scale of the resources authorized by the CDFI Bond Guarantee Program is orders of magnitude greater than any other available to the CDFI industry. The program will certainly generate interest from organizations that may not have previous relationships with the CDFI Fund. At the same time, the nature of bond financing means that existing CDFIs may collaborate on or establish Special-Purpose Entities (SPEs) to facilitate issuances. These factors mean that the Fund must tread carefully in certifying organizations in conjunction with application for the CBGP.

In issuing the Notice of Funds Available for its Financial Assistance program, the Fund generally limits eligibility to currently certified CDFIs, or those institutions that submit a certification application within a short deadline after the NOFA. Given the resources available through the CBGP, it is even more critical that the Fund protect the integrity of what it means to be a Treasury-certified CDFI and be wary of certifying organizations that are not mission-driven but seek certification solely for their participation in the CBGP. While the Fund cannot, and should not, deny certification to deserving organizations, it should exercise particular diligence in reviewing certification applications submitted in conjunction with applications for guarantee issuances or other participation in the CBGP. OFN’s letter submitted in response to the Request for Comments on the CBGP<sup>3</sup> contains additional detail on ways the Fund should approach certification of entities in conjunction with the program.

### **Timing**

In recent months, emerging CDFIs have grown increasingly frustrated with the slow pace of processing

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<sup>1</sup> Please see OFN’s comment letter to the Fund of December 15, 2009 for additional recommendations on the use of the Certification of Material Events form in recertification.

<sup>2</sup> For more on CARS™, see “CARS™ on the Road—Edition 6,” available at <http://www.carsratingsystem.net/pdfs/OnTheRoad.pdf>.

<sup>3</sup> Letter of August 15, 2011, in response to the Request for Comments published in the *Federal Register* on July 1.



CDFI Fund certification applications. While the CDFI Fund's website notes that certification decisions are generally made in 90 days, some CDFIs report having submitted applications that have not been acted on in six months or more. These delays impede CDFIs' access to private investors and to the increasing number of public-sector resources available to CDFIs both within and outside the CDFI Fund. While OFN does not propose a certification process that does not carefully examine an applicant's commitment to mission and status as a finance-led organization, the Fund must improve the turnaround time of applications for certification, particularly as application for certification is the first contact that many organizations have with the CDFI Fund. The Fund should, as with its current practice, prioritize certification applications of organizations that apply for funding from the CDFI Fund.

### **Conclusion**

Certification by the CDFI Fund has evolved into a key tool and "credential" for the opportunity finance industry. The Fund faces the challenge of keeping a clear focus on the certification criteria and ensuring that being "Treasury-certified" has a clear and valuable meaning, while communicating that certification confers no judgment about an institution's financial performance. It must grow the universe of certified CDFIs without compromising the track record of the industry. These goals are even more important as the CDFI Bond Guarantee program and other resources take center stage.

Opportunity Finance Network appreciates your consideration of our views and looks forward to working with you to build a strong and vibrant CDFI industry.

Sincerely,

Mark Pinsky

President and CEO