December 19, 2022

Michelle Dickens
Program Manager, Office of Certification Policy and Evaluation
Community Development Financial Institutions Fund
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

**RE: Notice and Request for Comment on CDFI Target Market Assessment
Methodologies (Document No. 2022-22767)**

Dear Ms. Dickens:

The Michigan Credit Union League (MCUL) is a statewide trade association representing
100% of the 199 state- and federally chartered credit unions located in Michigan and their
5.8 million members. As of the most recent published list[1] (12/14/22), the state of
Michigan is home to 26 CDFI-certified credit unions, accounting for over 60% of all
certified institutions in the state, 13% of credit unions located in the state and representing
over 20% of all state credit union members[2]. On behalf of our members, in particular our
26 CDFI members, we thank you for the opportunity to comment on the Notice and Request
for Public Comment regarding the Certified Community Development Financial Institutions
(CDFIs) Target Market Methodologies.

As an association representing mission-based, not-for-profit entities, the League
acknowledges and applauds the great work the Fund is engaging in. We recognize the
thought and reasoning present in the proposed methodologies – the Home Mortgage
Disclosure Act (HMDA) has implemented a data collection framework that seeks to root out
discrimination in mortgage lending practices – given the mission of the Fund, it is
understandable why it would seek to collect similar data. However, there is a concern that
the proposed methodologies may run afoul of long-established legislative acts, in particular

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[1] https://www.cdfifund.gov/sites/cdfi/files/2022-12/CDFI_Cert_List_12_14_2022_Final.xlsx
[2] Approx. 1.2 million members

the Equal Credit Opportunity Act (ECOA)[3] and its' associated regulation, Regulation B.[4] In particular, 12 CFR § 1002.5(b), when detailing rules concerning requests for information, states:

> (b) Limitation on information about race, color, religion, national origin, or sex. A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as provided in paragraphs (b)(1) and (b)(2) of this section.

The exceptions noted are in regard to a self-test for ECOA compliance ((b)(1)), as well as the optional collection of titles such as Mr., Ms., Mrs., Miss, and so on ((b)(2)), neither of which account for the data collection methodologies proposed by the Fund. This presents a major concern for credit unions subject to Regulation B. There is an exception present in section 523(c) of the Equitable Recovery Program;[5] however, that exception only exists for CDFI's who have received an ERP award, which cannot be expected for all CDFI's. This means, in practice, CDFI's will be required to collect data that they are regulatorily prohibited from obtaining, thereby risking either a regulatory-imposed penalty, the loss of their CDFI status, or both. This is an untenable position to be placed in.

With few exceptions, this concern exists for a majority of the Fund's proposed methodologies: OTP-African American, OPT-Hispanic, OTP-Other Pacific Islander, and OTP-People with disabilities. Each of these methods requires either a self-report by the borrower or a determination based on a visual assessment performed by an individual employed by the certified entity, both of which would run afoul of Regulation B. CUNAs comment letter includes additional details on this particular concern, which we include via reference.

Until recent, CDFIs have utilized census tracts and/or block groups as a proxy for race and ethnicity-based target populations. Credit unions, being community-based depository institutions, serve a multitude of communities. Given the ban on collecting race and ethnicity demographic data imposed by the ECOA and Regulation B, utilizing census tracts as a proxy for this data has served our state's CDFI credit unions well – removing proxies such as these and, instead, implementing the proposed OTP/LITP methodologies may very well remove a number of credit unions from the states' CDFI pool. Until better methods become available that likewise adhere to current regulatory regimes, proxy data is the best method currently available to depository institutions and should not be eliminated.

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[3] https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter41-subchapter4&edition=prelim
[4] https://www.consumerfinance.gov/rules-policy/regulations/1002/1/
[5] https://www.federalregister.gov/documents/2022/06/24/2022-13452/funding-opportunity-community-development-financial-institutions-equitable-recovery-program-cdfi-erp

We likewise include via reference comments made by Inclusiv, which details recommendations to add OTP and LITP target market methodologies that are suitable for regulated depository institutions, such as credit unions. These include:

1. Apply Investment Area criteria to census block groups to allow more CDFIs to certify using a single Investment Area Target Market.
2. Allow the use of low-income census tracts and block groups, identified using existing Investment Area criteria, as a geographic proxy for LITP.
3. Accept the use of modeled household income data from qualified third-party vendors for LITP verification.
4. Accept well-documented statistical proxies for individual race and ethnicity data, for example, Bayesian Improved Name and Geocoding analysis provided by qualified third-party vendors.

The League thanks you for the opportunity to comment on this very important topic.

Sincerely,

Patty Corkery
President & CEO, MCUL