LISC
LOCAL INITIATIVES
SUPPORT CORPORATION

November 22, 2022

Mr. Jeff Merkowitz
Senior Advisor
Community Development Financial Institutions (CDFI) Fund
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: CDFI Minority Lending Institution Designation Criteria

Dear Mr. Merkowitz,

The Local Initiatives Support Corporation (LISC) thanks you and the staff of the CDFI Fund for all the work you are doing to support CDFIs responding to challenges caused by the Covid-19 pandemic. We are also appreciative of the U.S. Department of the Treasury's commitment to reducing racial disparities by instituting an Advisory Committee on Racial Equity and creating a Counselor for Racial Equity position within the Department. LISC commends Treasury for bringing a focus to how racial disparities exacerbate economic disparities, and for examining its own programs to ensure they are accessible to all people.

Established in 1979, LISC is a national nonprofit housing and community development organization and certified CDFI dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity. LISC mobilizes corporate, government, and philanthropic support to provide local community development organizations with loans, grants, and equity investments; as well as technical and management assistance. Our organization has a nationwide footprint, with local offices in 38 cities. In 2021, LISC invested over $2 billion in these communities. Our work covers a wide range of activities, including housing, economic development, building family wealth and incomes, education, and creating healthy communities.

<u>Background</u>
The Consolidated Appropriations Act of 2021 (Public Law 116-260) provided the CDFI Fund $3 billion in supplemental resources to award to CDFIs responding to the economic impacts of the pandemic. We thank the CDFI Fund for quickly awarding the $1.25 billion in formula funding through the CDFI Rapid Response Program. The Act also provided $1.75 billion in funding to support CDFI lending in Minority communities and for Minority populations, with $1.2 billion of that amount for CDFIs that are Minority Lending Institutions (MLI). Critically, the law defined a MLI as an institution: (i) where the majority of on balance sheet financial products are directed at minorities or majority Minority census tracts or equivalents (the "lending test"); and (ii) with respect to nonprofit CDFIs, which meets standards for accountability to Minority populations as such standards are determined by the CDFI Fund ("the accountability test"). The CDFI Fund intends to publish a list of CDFIs meeting the new definition.

General Recommendations

LISC believes that the CDFI Fund should, to the extent possible, ensure that MLI definitions and practices are congruent with revised CDFI certification standards and reporting practices. The CDFI Fund has proposed new CDFI certification requirements, which include changes to the Target Market and Accountability standards. These two annual CDFI certification requirements have a strong relationship with the MLI definition's lending and accountability components. Treasury has not yet finalized the new CDFI certification guidance although it's critical that both are generally aligned, except where changes are needed to ensure MLI designees are held to higher standards.

We also recommend that Treasury utilize information already collected through annual data collections such as the Annual Certification Report (ACR) and Transaction Level Report (TLR) for assessing CDFI MLI status on a three-year basis. Utilizing existing reporting mechanisms, with changes incorporated as needed, will lower CDFI public reporting burden by avoiding new reporting requirements for determining CDFI MLI status.

CDFIs should be afforded an opportunity to restructure their organizations to meet CDFI MLI designation criteria. Many CDFIs that would otherwise qualify as MLIs based on their service to majority-Minority communities or Minority populations may not meet the new accountability designation criteria at the time the requirements are released; particularly those CDFIs which were certified with Target Markets comprised of Investment Areas or Low-Income Targeted Populations (as opposed to Other Targeted Populations). These CDFIs should be allowed ample time (at least 180 days) to satisfy the requirements for accountability set forth by the Fund. Allowing time for an organization to make such changes will further the Administration's racial equity goals – since it will incentivize CDFIs to place more persons of color on their governing boards and advisory boards.

Lending Test

Treasury proposes that an applicant demonstrate that it provide Financial Products to minorities or majority-Minority census tracts or equivalents by "submitting evidence that it has directed greater than 50 percent of its arm's-length, on balance sheet Financial Products to minorities or majority-Minority census tracts or equivalents 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."

1. Treasury asks if the 36 month period is the appropriate length of time to assess an applicant's track record and to maintain the certification.

   LISC believes using a 36 month average is appropriate since there can be annual fluctuations in a CDFI's lending activity and allowing a three year average mitigates against these risks, while still ensuring the CDFI is primarily focused on lending to minorities or majority-Minority communities. It's also in line with CDFI certification changes proposed by the CDFI Fund, which includes measuring CDFI financing activities based on a three-year average of Financial Products closed in their Target Markets.

2. The CDFI Fund asks if they should "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 are members of a Minority population" and if so how?

LISC believes including an assessment of end beneficiaries who are minorities should be allowed since the legislation's focus is on measuring overall CDFI financing to Minority populations or places. This should include CDFI lending to Minority controlled entities and to projects, which benefit a majority of Minority populations. This is also in line with current CDFI Program compliance practice, since the TLR Guidance asks for the income and racial and ethnicity status of End Users for a CDFI's annual lending activity. Under the TLR Guidance, CDFIs are instructed to report that their financing benefits minorities if the End Users constitutes a majority of the project's beneficiaries (and for small business, persons that are hired). LISC recommends that the CDFI Fund replicate this practice for CDFI MLI designation purposes.

Treasury has indicated in their proposed Pre-Approved Target Market Assessment Methodologies guidance that CDFIs will be able to report End Users for nonprofit borrowers under the Other Targeted Population Target Market for Minority populations. We note though that assessing End Users is not allowed for for-profit borrowers and recommend the proposed guidance is updated to include End Users for for-profit borrowers too. It's important that the CDFI MLI designation standards are aligned with Pre-Approved Target Market Assessment Methodologies guidance since this will direct CDFIs in how to verify their lending is serving Minority populations and communities.

Accountability

The Act requires that nonprofit CDFIs meet Accountability standards to Minority populations as determined by the CDFI Fund. Under current practice, a CDFI must demonstrate accountability to the Target Market it serves through representation on its governing board or advisory board. For a CDFI serving an Other Targeted Population focused on Minority populations, a board member must be a member of that Minority population to count towards the accountability requirements. When assessing whether an advisory board provides accountability to Minority populations, the CDFI Fund reviews each board member and also considers the following factors: how often the advisory board meets (must be at least biannually); how the advisory board members were selected; how advisory board members obtain input from Minority populations; and how the advisory board input is incorporated into the group's governing board's decision-making processes.

The CDFI Fund has proposed strengthening CDFI certification Accountability standards by instituting percent thresholds for governing and advisory boards members who are accountable to a CDFI's Target Market components. For nonprofit CDFIs, the current proposal generally requires at least one governing board member to be accountable to each Target Market, and at least 33 percent of the governing board accountable to the overall Target Market. For governing boards supplemented by an advisory board, the proposal would require:

- At least 20% of the governing board members are accountable to at least one proposed Target Market;
- At least one Advisory Board member is accountable to each proposed Target Market;
- At least 60% of the Advisory Board is accountable to the overall proposed Target Market(s);
- At least one governing board member has a seat on the Advisory Board; and
- The Applicant has adopted an organizational accountability policy.

1. Treasury states it's considering allowing CDFIs two options to demonstrate accountability to Minority populations. Option One would require that greater than 50 percent of the governing board or ownership entity is made up of individuals who are members of Minority Populations. Option Two would require between 33 percent and 50 percent of the governing board or ownership

of an organization is made up of individuals who are members of Minority population, *and* at least two of the following additional criteria are met: the chief executive officer (CEO) of the organization is a member of a Minority population; greater than 50 percent of the executive staff, other than the CEO are members of a Minority population; greater than 50 percent of the loan committee members are members of a Minority populations; and greater than 50 percent of the organization's advisory board members are members of Minority populations.

a. *LISC recommends that CDFIs seeking Minority Lending Institution designation should be held to a higher Accountability standard than through the CDFI certification process. We believe this is necessary since this designation should ideally demonstrate that a CDFI is both principally governed and led by Minority populations and primarily provides lending to Minorities and majority-minority places.*

   We recommend that the CDFI Fund first review Option One to determine if a CDFI's governing board is comprised of greater than 50 percent Minority members. If so, a CDFI should be deemed to meet the Accountability requirement. We note that the Minority Depository Institution definition in Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 requires depositories to meet a majority ownership test by Minority individuals, ***in addition*** *that the majority of the board of directors is Minority* ***and*** *the community the institution serves is predominantly Minority. Aligning the CDFI Fund's MLI definition is consistent with federal treatment for depository equivalent organizations.*[1]

b. *If an organization can't meet the first test, LISC supports extending the flexibilities in Option Two although recommends that the CDFI Fund strengthen the "greater than 50 percent of the organization's advisory board members are members of Minority populations." We recommend that this should be modified so at least one of those advisory board members is also a Minority governing board member. The CDFI Fund should also incorporate their proposed CDFI certification advisory board review practices for a MLI advisory board analysis. The Fund has proposed reviewing: how often an advisory board meets; whether it's governed by an organizational accountability policy; how it provides input to the governing board; and how it takes in feedback from the Target Market to make recommendations to the governing board, amongst other factors. These inclusions are necessary so that the advisory board has significant input into the CDFI's decision making.*

2. Treasury also asks "if a CDFI serves multiple Minority populations, for purposes of the MLI designation should it be required to have board or other representation reflective of each of the Minority populations it serves? If yes, how should the share of board or other representation for each Minority population the CDFI serves be determined?"

   LISC believes there should be a requirement for board members to be reflective of each Minority populations a CDFI serves. Many CDFIs serve numerous Minority populations so we recommend that this requirement should be triggered by the amount of Financial Products provided to Minority populations. LISC believes that CDFIs which provide 10 percent or

[1] https://www.fdic.gov/regulations/resources/Minority/mdidefinition.html#:~:text=FDIC%20Definition%20of%20Minority%20Depository%20Institution&text=Section%20308%20of%20FIRREA%20defines,socially%20and%20economically%20disadvantaged%20individuals.%22

greater of their Financial Products to a specified minority population should be required to have at least one governing board member reflective of that population. CDFIs should be afforded an opportunity to make annual changes to their governing board since it can be difficult to forecast closed loans in any given year.

We thank you for the opportunity to offer suggestions and please contact Mark Kudlowitz (mkudlowitz@lisc.org), LISC's Senior Director of Policy, if you have any questions.

Sincerely,

Matthew Josephs
Senior Vice President, Policy