

November 25, 2022

Ms. Jodie L. Harris  
Director  
Community Development Financial Institutions Fund  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Re: Comments on Docket Number CDFI-2022-0001 – Designation of CDFI as Minority Lending Institutions

Dear Ms. Harris:

On behalf of the members of the National Bankers Association (NBA), we submit the following comments, considerations, and recommendations in response to the CDFI Fund request for public comments regarding the criteria to designate a certified Community Development Financial Institution (CDFI) as a Minority Lending Institution (MLI) published in the Federal Register on July 28, 2022. Since its founding in 1927, the National Bankers Association has served as a voice for Black and other minority-owned banks (MDI Banks).

Now, with membership that includes Hispanic American, Asian-American, Native-American, and women-owned banks, our reach extends across the country. We believe strongly in advocating for not only our member banks, but also the communities they serve. Our members help low and moderate-income communities across the country, and they are committed to providing economic revitalization to families in those neighborhoods.

Our banks provide banking services to communities that are more likely to be unbanked or underbanked, but our impact is limited due to our small size, both in total assets and in number of institutions. Racial minorities, especially Black and Hispanic, are more likely to be unbanked and underbanked according to a Federal Reserve Report on the Economic Well-Being of U.S. Households in 2020. MDIs can be a solution to this problem if our banks can access more capital and scale up.

Several studies have shown that minorities, especially Black and brown Americans, are more likely to have bank accounts and access to fair and reasonably priced mortgage and small business loans if there is an MDI in their neighborhood. It is important to note that an average of 70 percent of minorities do not have a bank branch in their neighborhood. At the same time, MDI branches are in census tracts with a 77 percent minority population. Properly scaled, MDI banks are best positioned to provide access to capital for minority communities.

Unfortunately, MDIs' smaller size, especially among African American MDIs, has not allowed them to respond as quickly or with as much scale as the current economic situation in LMI communities demands. MDIs only make up 3 percent of all American banks. Given the important role these institutions play in the communities they serve, we need to do more to preserve and promote them. Our obligation in this regard is not just morally justified but required by federal statute. Passed into law in 1989, Section 308 of the

Financial Institutions Reform, Recovery, and Enforcement Act, or FIRREA, requires the Treasury, Federal Reserve, OCC, and FDIC to preserve and promote MDIs in a variety of ways, including preserving the number of MDIs. This statutory obligation should be considered a part of Treasury and the regulators' overall mission to maintain stability and public confidence in the nation's financial system.

The Treasury and bank supervisory agencies have unfortunately failed to preserve and promote MDIs. The overall number of MDIs has declined by 33 percent since 2008, and among Black-owned MDIs, the problem is especially pronounced, as Black-owned banks have suffered from many of the same conditions and structural lack of access to capital as the Black community as a whole. Of the 4,377 total insured commercial banks in the U.S., only 144 are MDIs.

The NBA has advocated for changes to key programs that could curb this decline, but unfortunately have met with mixed results. Access to capital will allow MDIs to not only respond better during times of crisis but allow us to reverse the situations in our communities that lead to worse outcomes during economic challenges. The ECIP capital is a historic step in the right direction, but unfortunately many of our banks were not able to access ECIP due to prior regulatory challenges, based on examination standards that do not take into account the unique business models many mission driven banks need to employ to provide basic banking services in markets that would otherwise be ignored by the financial services mainstream. We need to find additional ways to direct capital and business opportunities to those banks and the communities they serve.

Our membership believes the NMTC is an important and flexible tool for community economic development that has almost zero net negative impact on the federal budget and can lead to positive, catalytic change in the communities we serve. While we do not believe CDFI Fund or Treasury staff have necessarily intended for MDI banks and other minority CDEs to suffer disparate impact in the administration of the NMTC allocation process, there is simply no question that a self-perpetuating system has been created which has racially biased outcomes. We believe strongly that the Fund staff can make administrative changes in how the program is administered, all within statutory and regulatory authority, to allow more of the benefits of this program to reach minority communities, minority CDES, and MDI banks, which are the economic anchors of the minority and low-income communities we serve.

In our view, there needs to be more of a focus on capitalizing and promoting MDIs than on creating pathways for non-minority institutions to provide services in our community. This is why the Association has consistently opposed the creation of the Minority Lending Institution designation. However, we do understand that there is now a statutory obligation for the Fund to develop criteria for this designation and therefore we respectfully submit the following comments in response to your questions:

## **I. Definitions**

1. Is the proposed definition of "Majority-Minority Census Tracts" appropriate for the purposes of designating an MLI? Definition - census tracts or equivalents in which the sum of the tract's non-duplicative population of Minority persons is greater than 50% of the census tract's total population.

No. If MLIs are in any way restricted to investing (only, mostly, or more) in historically underserved, distressed, higher-risk geographies, MLIs are effectively being forced to be less profitable and more likely to fail than conventional banks, which is counterproductive. MLIs should be free to invest in AAA-rated credits that may lie outside of at-risk geographies and

populations because they deserve to be profitable, as well.

**We believe the Fund should accept the FDIC's classification of MDIs (to include minority focus classifications of Hispanic, African American, etc.) in lieu of the Fund's criteria for MLI requirements. To ensure the delivery of Financial Products is MLI-related, MDIs should also be required to have Satisfactory or Outstanding CRA Ratings. (That eliminates the Fund creating requirements that are more restrictive than regulatory standards since CRA evaluates lending in LMI areas, many of which are MMCTs. MDIs are also required to meet Fair Lending requirements as nonprofit loan funds are not subject to the rigors of legislation that MDIs must navigate).**

## II. Designation Criteria

### A. CDFI Status

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

1. Is a rolling 36-month period the appropriate length of time to assess an applicant's track record of serving minorities or majority-minority census tracts? Is there some other time period, either upon initial designation or to maintain the designation that would be better to use? If yes, what is an appropriate time period?

**Yes, but the assessment should be more qualitative than quantitative. Typically, these measurements create a burden on MLIs who 1) do not track this information, 2) do not have the staff or man-hours readily available to conduct this special-purpose assessment, and 3) it is not usually easily and accurately verified. MLIs should be asked to explain why they believe their institution deserves the designation. In addition, MDIs applying for the designation should be given the opportunity to share anecdotal data as they deem appropriate. A follow-up interview would be far more accurate than the results achieved through disconnected and distributed application processes.**

2. 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, childcare 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. MLIs can simply confirm the majority (or, more than the 2x the national percentage - 14% aa, 2% Native American, etc.) of beneficiaries are minorities. For example, a school that serves 49% African Americans should be considered mission-driven, even though it is not the majority. This same standard should apply to projects that are located in MMCTs as well.**

### C. Accountability

1. Should a majority (greater than 50 percent) of CDFI's governing board be required to be members of minority populations to demonstrate accountability to minority populations? Should the CDFI set a standard higher than the 33 percent level proposed separately for native

CDFI designation and for general target market accountability as part of the CDFI fund certification standards (see <https://www.cdfifund.gov/programs-training/certification/cdfi/certification-pra>).

**Yes, 50% or more because history shows that true MLIS meets that standard. We should not create lower standards for PWIS to qualify. In addition, their governance board should be more than 50% minority representation (65-75% range). Minorities are underrepresented on MLI and non-MLI boards, and this could help address that as a by-product.**

2. Should there be options for CDFIs to meet the accountability requirement through a lower threshold of Minority representation on a CDFI's governing board? If yes, what level of representation is appropriate?

**No. See #4, above.**

3. Alternatively, is a standard of 33 percent Minority representation for a CDFI's governing board members in combination with 66 percent for a CDFI's advisory board (with at least one governing board member serving on the advisory board) appropriate to demonstrate accountability to Minority populations?

**No. Advisory Boards do not have decision-making authority - and this could lead to PWIs having black/brown participants on these boards for the sole purpose of qualifying for designation. There have been numerous examples of such behavior in many different contexts and we do not feel this would be an appropriate qualifying criterion.**

4. Given the regulatory requirements for the governing board composition of regulated financial institutions, as well as the absence of governing boards for some privately held entities, should there also be an option for non-MDI regulated entities or privately held entities without a governing board to demonstrate accountability for the purposes of MLI designation? If yes, what standard should be used?

**No. We believe if the organization does not have minority representation in a governing capacity, they shouldn't be eligible for MLI designation.**

5. Should the CDFI Fund allow a CDFI's principals or executive staff (meaning all directors and executive officers vested with the powers to manage and supervise the day-to-day affairs of an organization) to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes:

**No. The purpose of accountability is to inform the development of products and services, provide feedback, shape strategy, etc. In our view, staff deliver on the will of the Board and should not count towards accountability requirements. Current CDFI Fund Certification policy does not allow staff to count for accountability purposes or persons who has a 25% or more interest in the organization.**

- a. Which and how many of a CDFI's executive staff members should be necessary to demonstrate accountability to Minority populations, and in what combination with the CDFI's governing board?

**None.**

- b. The use of executive staff or principals to demonstrate accountability to a Minority population may be undermined due to the principal's or executive staff member's financial relationship to the organization. Are there any appropriate safeguards to mitigate such a conflict between the interests of a principal or executive staff member and the Minority community to which they are to be accountable? If yes, what are some safeguards?

**If a minority has a stake in a for-profit organization (25% or more), then that person can be deemed "Accountable." That's a twist on the CDFI Certification requirements about ownership.**

6. Should the CDFI Fund allow the ownership of a CDFI to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes, should accountability mirror the MDI definition (*i.e.*, 51 percent or more of the voting stock is owned by minority individuals) to be counted in determining minority ownership? If ownership should be permitted to demonstrate accountability only in combination with some level of governing board representation, what should that threshold be?

**MDIs should automatically meet the accountability threshold since they've been vetted via the FDIC. At least 51% of the Governing Board should also be minority. We are not opposed to the additional Governing Board standard for MDIs - which should be between 33% and 51% - ONLY if the organization is truly owned by minorities.**

7. Should the CDFI Fund allow the composition of a CDFI's loan committees to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes, how many members of a CDFI's loan committee should be necessary to demonstrate accountability to Minority populations, and in what combination with the CDFI's governing board?

**No. Not every Loan Committee reports directly to the Board of Directors. So, Loan Committee representation doesn't have real power/value in accountability and is therefore less tangible. Accountability should remain at the Governance and Ownership levels with input from Advisory Boards (codified via AB guidelines).**

8. 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?

**Yes - all minorities served should be represented. The determination of how the Board representation should be allocated should be based on the actual lending distribution. (i.e. if 25% of the loans are to Natives, 25% of the Board should be Native; 15% of lending to African-Americans, 15% of Board should be African-American)**

9. 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?

**Yes.**

- b. Should the status as a Native MDI automatically qualify as an accountability criterion if the CDFI also serves other Minority populations?

**No. Determination of how the Board representation should be allocated should be based on the actual lending distribution. (i.e. if 25% of the loans are to Natives, 25% of the Board should be Native; 15% of lending to African-Americans, 15% of Board should be African-American)**

10. Should MLIs be able to demonstrate accountability through means other than those identified above? If yes, how?

**No.**

We fully appreciate the efforts and thoughtful consideration of the CDFI Fund and its staff to implement the Minority Lending Institution designation. The designation has the potential to allow MDIs and CDFIs to serve their communities more fully and therefore, we are excited about the opportunity to work with the Fund to make implementation a success.

Thank you again for the opportunity to comment.

Sincerely,



Nicole A. Elam, Esq.  
President & CEO