

DEPARTMENT OF THE TREASURY**Community Development Financial Institutions Fund****12 CFR Part 1805**

RIN 1505-AA71

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program). The revised interim rule is intended to enable the CDFI Fund to administer the CDFI Program in a more efficient manner. The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry.

DATES: Revised interim rule effective April 4, 1997; comments must be received on or before July 31, 1997.

ADDRESSES: All comments concerning this revised interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, Community Development Financial Institutions Fund, at (202) 622-8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:**I. General***Executive Order (E.O.) 12866*

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Because no substantive changes were made to this regulation subsequent to submission to the Office of Management and Budget (OMB), the provisions of section 6(a)(3)(E) of the E.O. do not apply.

Regulatory Flexibility Act

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the

Department of the Treasury finds that any economic or other consequence of this revised interim rule are a direct result of the implementation of statutory provisions.

Paperwork Reduction Act

The Department of the Treasury is issuing these revised interim regulations without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these revised interim regulations have been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the OMB under control number 1505-0154. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Comments concerning the collection of information should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Community Development Financial Institutions Fund, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Any such comments should be submitted not later than July 31, 1997. Comments are specifically requested concerning:

(1) Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the Community Development Financial Institutions Fund, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection(s) of information (see below);

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of complying with the proposed collection(s) of information, including the application of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Provisions requiring the collection of information can be found in §§ 1805.701 and 1805.903 of these revised interim regulations. The information requested in such provisions will be used to

evaluate applications, monitor the performance of entities receiving assistance, and ensure compliance with statutory and program requirements. The collection(s) of information is required to obtain a benefit. The anticipated respondents and recordkeepers are financial institutions that may apply for and receive assistance.

Estimated total annual reporting and/or recordkeeping burden: 30,000.

Estimated average annual burden hours per respondent and/or recordkeeper: 100.

Estimated number of respondents and/or recordkeepers: 300.

Estimated annual frequency of responses: 1-4.

National Environmental Policy Act

Pursuant to Treasury Directive 75-02 (Department of the Treasury Environmental Quality Program), the Department has determined that these revised interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

Pursuant to the provisions of 5 U.S.C. 553(a)(2), these revised interim regulations are exempt from the proposed rule-making requirements of 5 U.S.C. 553(b) and are being issued as revised interim regulations without opportunity for notice and public comment prior to their effective date. Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. Congress appropriated funds for the CDFI Fund in FY 1996 and required such funds to be obligated by September 30, 1997. If the Department does not issue these regulations for effect, it will not be feasible to implement this program, as amended prior to September 30, 1997 in a manner that better achieves the results intended by Congress.

Catalog of Federal Financial Assistance Number

Community Development Financial Institutions Program—21.020.

II. Background

The CDFI Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of

the Administrator of the Fund as set forth in the authorizing statute.

Consistent with the placement and administration of the Fund within the Department's organizational structure, the Department of the Treasury's Inspector General will serve as the Inspector General for the Fund. Any individual who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided by the Fund is encouraged to report it to the Department of the Treasury's Office of Inspector General in writing or on the Inspector General's Hotline (toll free 1-800-359-3898). All telephone calls will be handled confidentially. Written complaints should be addressed to the U.S. Department of the Treasury, Office of Inspector General, Room 2412, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

All records and materials pertaining to the selection and awarding of assistance by the Fund shall be fully subject to the Freedom of Information Act. Interested parties should contact the U.S. Department of the Treasury, Office of the Assistant Secretary for Management, Disclosure Services at (202) 622-1500.

The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry. The initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left behind by the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small business, and empowering people. Over the past three decades, community-based financial institutions have proven that strategic lending and investment activities tailored to the unique characteristics of underserved markets are highly effective in improving the economic well being of communities and the people who live there.

The CDFI Fund was established to facilitate the creation of new, and expansion of existing, financial institutions that are specialized in serving these markets. These institutions—while highly effective—are typically small in scale, too few in number, and often have difficulty raising the equity capital needed to meet the demands for their products and services. The investments by the CDFI

Program are intended to provide much-needed capital that will enable existing institutions to expand and facilitate the start-up of new institutions.

This issue of the **Federal Register** also contains two separate Notices of Funds Availability (NOFAs) for the program, one for the core component of the CDFI Program and another for a new intermediary component. The core component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities, rather than primarily through the financing of other CDFIs. The core component continues the basic approach followed by the Fund in the first round of the CDFI Program. For the foreseeable future, the core component will receive the great bulk of the Fund's resources devoted to the CDFI Program.

The new intermediary component provides financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. The Fund recognizes that there are in existence certain intermediary CDFIs, and others may be created over time, that focus their financing activities primarily on financing other CDFIs. Such institutions may have knowledge and capacity to develop and implement a specialized niche or niches in their financing of CDFIs and/or CDFIs in formation. The Fund believes that providing financial assistance to such intermediaries can be an effective way to expand its support of the CDFI industry. To illustrate the concept of an intermediary CDFI with a few examples, an intermediary may have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing institutions seeking to become CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry.

The revised interim rule published in this issue of the **Federal Register** incorporates only technical and other clarifying changes to the previous interim rule, including changes designed to provide flexibility and ease the burden of application and reporting requirements. The Fund received 20 written submissions of formal comments in response to the interim rule for the CDFI Program published in the **Federal Register** on October 19, 1995. The comments covered a variety of subjects including eligibility, target market designation, matching

requirements, application contents, and the review process. The Fund has determined that before developing a final rule for this program, it would be useful to give interested parties an additional opportunity to comment on the interim rule, informed by their experience under the Program's first round and the process of developing applications pursuant to the NOFAs published separately in this issue of the **Federal Register**. It is the Fund's intent to issue a final rule that incorporates or addresses both the formal comments previously submitted and new comments received in response to the publication of this revised interim rule.

The following is a summary of the major provisions of the revised interim regulations, including references to the most significant changes from the earlier interim rule.

III. Community Development Financial Institutions Program

Subpart A—General Provisions

Under the Community Development Financial Institutions Program (12 CFR part 1805), the Fund provides financial and technical assistance to selected applicants in order to enhance their ability to make loans and investments and provide services for the benefit of designated investment area(s), targeted population(s), or both. The Fund selects awardees through a competitive application process. After selection, each awardee will enter into an assistance agreement with the Fund which includes the establishment of performance goals and other terms and conditions.

Subpart A contains general provisions including the purpose of the program (§ 1805.100), a summary (§ 1805.101), its relationship to other Fund programs (§ 1805.102) and definitions (§ 1805.104). Section 1805.104(aa) amends the definition of Low Income to accommodate appropriate adjustments since the 1990 census.

Subpart B—Eligibility

Section 1805.200 establishes criteria for qualification as a CDFI. The criteria reflect the requirements stated in the authorizing statute. To be eligible to apply for assistance, an entity must either be, or propose to become, a CDFI. The revised interim regulations describe the information needed by the Fund to assess whether, among other things:

- (1) The applicant has a primary mission of community development;
- (2) The applicant's predominant business activity is the provision of loans or investments; and

(3) The applicant serves an investment area(s) or targeted population(s).

The Fund recognizes that there will be significant diversity among applicants with respect to asset size, organizational type, stage of organizational development, products and services offered, and geographic location. Section 1805.200 provides that although an entity that proposes to become a CDFI may apply for assistance, if selected to receive financial assistance from the Fund such entity will not receive such financial assistance until it qualifies as a CDFI. An entity may receive technical assistance from the Fund before it becomes a CDFI, if such technical assistance is designed to assist it to become a CDFI.

The revised interim rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it can qualify as a CDFI within two years of entering into an assistance agreement with the Fund (or such lesser period as may be set forth in an applicable NOFA). The Fund recognizes that in certain cases, for example, start-ups that must undertake substantial fund raising and/or organizations that require regulatory approvals, an entity selected to receive assistance may not qualify as a CDFI until some time after its selection. However, the Fund believes that in most cases substantially less than two years will be required.

Section 1805.201 allows an entity to apply to the Fund for certification as a CDFI regardless of whether it is applying for assistance. The Fund believes that such a certification process will recognize the importance of the activities that institutions are engaged in, enhance their credibility with investors, and facilitate participation by CDFIs in other government programs.

Subpart C—Target Markets

As stated in § 1805.300, an applicant must designate one or more investment areas or targeted populations as the target market(s) it intends to serve. Section 1805.301 gives each applicant significant flexibility in designating an investment area provided that certain conditions are met. Investment areas must meet objective criteria of distress. Consistent with its statutory mandate, the Fund has developed objective criteria that are appropriate for identifying distress in metropolitan, non-metropolitan, and Native American communities. Investment areas may be comprised of a variety of different

geographic units in order to reflect the neighborhoods, areas, or markets that applicants serve or propose to serve.

Section 1805.301 requires that an investment area in a metropolitan area consist of census tracts, block groups, or a combination thereof.

Section 1805.302 incorporates the statutory requirements for defining a targeted population.

Subpart D—Use of Funds/Eligible Activities

Section 1805.401 lists the eligible activities for which financial assistance must be used and permits the Fund to approve other activities. Section 1805.402 requires that an applicant use the Fund's assistance and any corresponding matching funds for purposes approved by the Fund as reflected in an assistance agreement. The revised interim regulations place restrictions on such applicant's distribution of monies to affiliates or its community partners. Section 1805.403 describes technical assistance which may be sought as part of the application. Technical assistance requests pursuant to this part will be evaluated pursuant to the same competitive review criteria as financial assistance requests.

Subpart E—Investment Instruments

Section 1805.500 states that the Fund's primary objective in awarding financial assistance is to enhance the stability, performance, and capacity of an awardee. The Fund retains discretion to provide its assistance in a manner and amount different from an applicant's request.

Section 1805.501 describes the types of investment instruments through which the Fund may provide financial assistance. Section 1805.502 restates the Act's aggregate assistance limit of \$5 million for each applicant in any three-year period—which may be increased by up to \$3.75 million under special circumstances which have been clarified in the revised interim rule.

Subpart F—Matching Funds Requirements

Pursuant to § 1805.600, each applicant must obtain matching funds from sources other than the Federal government that are at least equal to the amount of financial assistance provided by the Fund. Community Development Block Grant funds may not be used for the match. As required by the Act and § 1805.601, the matching funds must be comparable in form and value to the Fund's financial assistance. This provision is intended to encourage match providers to offer their resources under the most favorable terms and

conditions possible and enable a CDFI to obtain the Fund's assistance in a like manner.

Section 1805.603 permits applicants to satisfy matching requirements with funds obtained for up to one year prior to publication of a NOFA or such earlier date as may be specified in a NOFA for a particular funding round. The revised interim rule clarifies that funds that are used prior to the execution of the assistance agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the comprehensive business plan that the Fund is supporting through its assistance. (The revised interim rule further provides that funds spent for operating expenses prior to the calendar year in which the deadline falls for receipt of applications in an applicable NOFA shall not be eligible to be considered as matching funds.) To the extent consistent with the Act and these revised interim regulations, the Fund believes that applicants should be able to use matching funds when they are available.

Each NOFA may establish other conditions or restrictions on the time period for raising matching funds.

Subpart G—Applications For Assistance

Section 1805.701 specifies the information that must be provided as part of an application. This information describes how an applicant can demonstrate whether it meets the eligibility requirements of subpart B. The section also describes information that an applicant must provide to be evaluated and selected under subpart H. The most significant component of the application is a five-year comprehensive business plan. The plan will provide the basis for evaluating both the applicant's current capacity and its potential for the future. The plan must include, among other things, elements related to financial performance, management policies and capacity, market analysis, coordination efforts, community impact, funding resources, and timing. The application must contain a detailed description of the matching funds to be raised by the applicant for use in conjunction with the Fund's assistance. In order to facilitate coherence and avoid duplication, the revised interim rule permits an applicant to present its application materials in an order and format that it believes is the most appropriate. The revised interim rule also eliminates the Low Income Targeted Population Worksheet.

Subpart H—Evaluation and Selection of Applicants

Section 1805.800 outlines the evaluation and selection process. Section 1805.801 indicates the Fund's intent to seek to fund a geographically diverse group of applicants as required by the Act. The revised interim rule amends the evaluation and selection process discussed in subpart H. Without eliminating any of the evaluation factors, the revised interim rule restructures the process of evaluating applications described in § 1805.802 to expedite the process and improve its efficiency.

The revised interim rule states that the Fund will not provide assistance to an applicant that does not meet the eligibility requirements or that has not submitted complete application materials. In addition, the revised interim rule consolidates what had been the Tier 2 (financial and organizational capacity) and Tier 3 (other qualitative criteria) reviews into one set of substantive review criteria. The selection criteria set forth with respect to the CDFI Program in the interim rule published in the **Federal Register** on October 19, 1995, are retained, including financial strength and organizational capacity, extent of external resources, and community impact. The revised interim rule clarifies that the criteria to be considered include the quality of the applicant's comprehensive business plan and the extent and nature of an applicant's potential community development impact that will be catalyzed relative to the amount of assistance to be provided by the Fund. While ensuring fairness and consistency, the Fund will seek to implement the evaluation and selection process in a manner that takes into consideration the unique characteristics of applicants that vary by organizational type, total asset size, and stage of organizational development.

Subpart I—Terms and Conditions of Assistance

While Federal and State agencies will retain responsibility for assuring the safety and soundness of insured CDFIs, pursuant to § 1805.900 the Fund will (to the extent practicable) ensure that unregulated awardees are financially and managerially sound and maintain appropriate internal controls. Prior to receiving assistance, each awardee will execute an agreement with the Fund that describes its performance goals and other terms and conditions of assistance. Section 1805.901 describes the nature and use of the Fund's

assistance agreements. The agreement will contain sanctions for noncompliance. As required by the Act, any proposed sanctions to be imposed on an insured CDFI must be discussed with the appropriate Federal banking agency under specific procedures. Pursuant to § 1805.902, disbursement of assistance from the Fund will be in a lump sum or over a period of time, as determined by the Fund. However, the Fund may provide no financial assistance until the awardee has secured firm commitments for its corresponding matching funds. This provision is intended to ensure that no Federal funds are released until other resources are leveraged.

Section 1805.903 describes the recordkeeping and reporting requirements applicable to awardees. These requirements are consistent with the Fund's fiduciary and monitoring responsibilities. Awardees are required to submit quarterly data on financial indicators and performance measures and annual reports and audits on its financial and programmatic performance. The revised interim rule contains modifications intended to provide awardees flexibility in their quarterly reports as well as flexibility in the timing of the submission of reports.

In developing its revised regulations, the Fund has sought to minimize its recordkeeping and reporting requirements. The Fund requests input on how to further reduce such burden while still meeting its statutory monitoring and enforcement requirements.

All awardees shall be subject to legal requirements pertaining to the Fund's assistance, including conflict of interest standards. Section 1805.905 requires each awardee to comply with all other governmental requirements. Section 1805.906 requires awardees to maintain standards of conduct acceptable to the Fund. Section 1805.907 describes lobbying restrictions applicable to awardees.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

For the reasons set forth in the preamble, chapter XVIII of title 12 of the Code of Federal Regulations is amended by revising part 1805 to read as follows:

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM**Subpart A—General Provisions**

Sec.

- 1805.100 Purpose.
- 1805.101 Summary.
- 1805.102 Relationship to other Fund programs.
- 1805.103 Awardee not instrumentality.
- 1805.104 Definitions.
- 1805.105 Waiver authority.
- 1805.106 OMB control number.

Subpart B—Eligibility

- 1805.200 Applicant eligibility.
- 1805.201 Certification as a Community Development Financial Institution.

Subpart C—Target Markets

- 1805.300 Target markets—general.
- 1805.301 Investment Area.
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Subpart D—Use of Funds/Eligible Activities

- 1805.400 Purposes of financial assistance.
- 1805.401 Eligible activities.
- 1805.402 Restrictions on use of assistance.
- 1805.403 Technical assistance.

Subpart E—Investment Instruments

- 1805.500 Investment instruments—general.
- 1805.501 Forms of investment instruments.
- 1805.502 Assistance limits.
- 1805.503 Authority to sell.

Subpart F—Matching Funds Requirements

- 1805.600 Matching funds—general.
- 1805.601 Comparability of form and value.
- 1805.602 Severe constraints waiver.
- 1805.603 Time frame for raising match.
- 1805.604 Retained earnings.

Subpart G—Applications for Assistance

- 1805.700 Notice of funds availability.
- 1805.701 Application contents.

Subpart H—Evaluation and Selection of Applications

- 1805.800 Evaluation and selection—general.
- 1805.801 Geographic diversity.
- 1805.802 Evaluation of applications.

Subpart I—Terms and Conditions of Assistance

- 1805.900 Safety and soundness.
- 1805.901 Assistance Agreement; sanctions.
- 1805.902 Disbursement of funds.
- 1805.903 Data collection and reporting.
- 1805.904 Information.
- 1805.905 Compliance with government requirements.
- 1805.906 Conflict of interest requirements.
- 1805.907 Lobbying restrictions.
- 1805.908 Criminal provisions.
- 1805.909 Fund deemed not to control.
- 1805.910 Limitation on liability.
- 1805.911 Fraud, waste and abuse.

Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Subpart A—General Provisions**§ 1805.100 Purpose.**

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a competitive application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.*

(1) No Community Development Financial Institution may receive assistance from the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application for assistance pending under the Community Development Financial Institutions Program;

(ii) Received assistance under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Received assistance under the Community Development Financial Institutions Program for the same activities as proposed under an application for the Bank Enterprise Award Program.

(2) An Equity Investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution made by a Bank Enterprise Award Program Awardee may be used to meet the matching fund requirements described in subpart F of this part. Receipt of such Equity Investment or loan does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive

assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements under § 1805.200;

(h) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(i) *Community Facility* means a facility where health care, child care, educational, cultural, or social services are provided; /

(j) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(k) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(l) *Community Partner* means a person (other than an individual) that provides loans, equity investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may

include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(m) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, equity investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(n) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described under § 1805.701(d);

(o) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*);

(p) *Development Investment* means an equity investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate;

(q) *Development Services* means activities that promote community development and are integral to lending and Development Investment activities. Such services shall prepare or assist potential borrowers or investees to utilize the lending or investment products of the Awardee, its Affiliates, or its Community Partners. Such services include, for example:

(1) Financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or

(2) Technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Financial Services* means checking, check-cashing, money orders, certified checks, automated teller machines, deposit-taking, and safe deposit box services;

(s) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(t) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(u) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(v) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(w) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(x) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(y) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(z) *Investment Area* means a geographic area meeting the requirements of § 1805.301;

(aa) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and
(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(bb) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended;

(cc) *Non-Regulated CDFI* means any entity meeting the eligibility requirements of § 1805.200 which is not a Depository Institution Holding

Company, Insured Depository Institution, or Insured Credit Union;

(dd) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(ee) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(h)(4); and

(ff) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.302.

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505-0154.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in paragraphs (b) through (h) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part. Criteria to establish compliance with such requirements are set forth in § 1805.701(b).

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in paragraphs (b) through (h) of this section within two years of entering into an Assistance Agreement with the Fund or such lesser period as may be set forth in an

applicable Notice of Funds Availability (NOFA). The Fund shall not, however, disburse any financial assistance to such an entity before it meets the requirements described in paragraphs (b) through (h) of this section.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.701(b).

(b) *Primary mission.* A CDFI shall have a primary mission of promoting community development.

(c) *Target market.* A CDFI shall serve an Investment Area(s) or Targeted Population(s).

(d) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision of loans or Development Investments.

(e) *Development Services.* A CDFI, directly or through an Affiliate, shall provide Development Services in conjunction with loans or Development Investments.

(f) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(g) *Non-government entity.* A CDFI shall not be an agency or instrumentality of the government of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided that it is not controlled by such entities and maintains independent decision-making power over its activities.

(h) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in paragraphs (a) through (g) of this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in paragraphs (a) through (g) of this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in paragraphs (a) through (g) of this section.

(4) For the purposes of paragraphs (h)(1), (2) and (3) of this section, an Applicant will not be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls less than 25 percent of any class of its voting shares, and which does not, in any manner, otherwise control the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements (as described under § 1805.200) regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information described under § 1805.701(b). Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such a certification shall not constitute an opinion by the Fund as to the financial viability of the entity that obtains such certification or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraphs (b) through (h) of § 1805.200 are no longer met.

Subpart C—Target Markets

§ 1805.300 Target markets—general.

An Applicant shall designate one or more Investment Area(s) or Targeted Population(s) that it proposes to serve. An Applicant may also choose to serve both an Investment Area(s) and a Targeted Population(s). An Investment Area shall meet specific geographic and other criteria discussed in § 1805.301. A Targeted Population shall consist of Low-Income persons or those who otherwise lack adequate access to loans or equity investments.

§ 1805.301 Investment Area.

(a) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

- (1)(i) Meets at least one of the objective criteria of economic distress as set forth in paragraph (d) of this section and has significant unmet needs for loans or equity investments as described in paragraph (e) of this section; or
- (ii) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391); and
- (2) Is entirely located within the geographic boundaries of the United

States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(b) *Geographic units.* Subject to the remainder of this paragraph (b), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant can designate one or more Investment Areas as part of a single application.

(c) *Designation.* An Applicant can designate an Investment Area by selecting:

- (1) A geographic unit(s) which individually meets one of the criteria in paragraph (d) of this section; or
- (2) A group of contiguous geographic units which together meet one of the criteria in paragraph (d) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(d) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the 1990 (or subsequent) decennial census and published by the U.S. Bureau of the Census):

- (1) The percentage of the population living in poverty is at least 20 percent;
- (2) In the case of an Investment Area located:

- (i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or
- (ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(3) The unemployment rate is at least 1.5 times the national average;

(4) The percentage of occupied distressed housing (as indicated by lack

of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(5) In areas located outside of a Metropolitan Area, the county population loss between 1980 and 1990 is at least 10 percent.

(e) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or equity investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans and equity investments within such area(s).

(f) *Serving Investment Areas.* An Applicant can serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents.

§ 1805.302 Targeted Population.

(a) A Targeted Population shall mean individuals, or an identifiable group of individuals, who: are Low-Income persons; or lack adequate access to loans or equity investments. An Applicant can serve the members of a Targeted Population directly or through borrowers or investees that directly serve or provide significant benefits to such members.

(b) The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(c) An Applicant shall provide its products and services in a manner that is consistent with the Equal Credit Opportunity Act (15 U.S.C. 1691), to the extent that the Applicant is subject to the requirements of such Act.

Subpart D—Use of Funds/Eligible Activities

§ 1805.400 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart E of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to make loans and Development Investments and provide Financial Services.

§ 1805.401 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted

Population(s) by developing or supporting:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.402 Restrictions on use of assistance.

(a) An Awardee shall only use assistance provided by the Fund and its corresponding matching funds for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.403 Technical assistance.

(a) General. The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide

technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether or not the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.502.

(c) An Applicant seeking technical assistance must meet the eligibility requirements of § 1805.200 and submit an application as described in § 1805.701.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the competitive review criteria in subpart H of this part, except that requirements for matching funds are not applicable to technical assistance requests.

Subpart E—Investment Instruments

§ 1805.500 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.501, and under such terms and conditions as described in this subpart E. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.501 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which

shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.502 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than \$5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of \$3.75 million during the same three-year period. Such additional assistance:

(1) Shall only be used to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart H of this part.

(c) An Awardee may only receive the assistance described in paragraph (b) of this section if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.802(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

§ 1805.503 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart F—Matching Funds Requirements

§ 1805.600 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.602, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under another Federal grant or award program cannot be used to satisfy the matching requirements described in this section. Community

Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance. However, funds spent for operating expenses prior to the calendar year in which falls the deadline for receipt of applications pursuant to an applicable NOFA shall not be used to meet the matching requirements.

§ 1805.601 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.602). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.602 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than \$100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than \$25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a "severe constraints waiver" as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a "severe constraints waiver" only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.603 Time frame for raising match.

Applicants may use monies that have been obtained or legally committed for up to one year prior to the publication of a NOFA, or such earlier date or period specified in the NOFA, for an applicable funding round to meet the matching requirements. An Applicant shall raise the balance of its matching requirements within the period set forth in the applicable NOFA.

§ 1805.604 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.601(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (e.g., retained earnings at the end of fiscal year 1996 less retained earnings at the end of fiscal year 1995); or

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings can be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than an Insured Credit

Union), retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings can be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an Insured Credit Union Applicant, retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in net capital that has occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire net capital that has been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, net capital shall be comprised of "Regular Reserves", "Other Reserves" (excluding reserves specifically dedicated for losses), and "Undivided Earnings" as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings can be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is at least equal to four times the amount of net capital that is committed as matching funds;

(B) Such increase be achieved within 18 months of the last day of the month prior to the month in which the Applicant is selected to receive assistance; and

(C) Such increase be maintained for the period of time covered by the Comprehensive Business Plan;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares; (iii) The level from which the

increases in shares described in paragraph (d)(4)(i) of this section will be measured shall be the greater of the level of shares as of:

(A) The end of the calendar year immediately preceding the applicable application deadline; or

(B) The last day of the month prior to the month in which an Applicant is selected to receive assistance; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) An Applicant may only use retained earnings to meet the matching funds requirements if it has liquidity (as determined by the Fund) in amounts that are equal to or greater than the amount of retained earnings that is proposed for use as matching funds. In assessing an Applicant's liquidity for the purposes of this paragraph (e), the Fund may exclude any amounts that it determines are not available to promote an Awardee's performance goals and the purposes of the CDFI Program.

(f) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

Subpart G—Applications for Assistance

§ 1805.700 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with these regulations and the applicable NOFA published in the **Federal Register**. The NOFA will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

§ 1805.701 Application contents.

Unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet including the items specified in this section. To

facilitate coherence and avoid duplication, an Applicant may present its application in an order and format that it believes to be the most appropriate, provided that the requested information is included and that an index is included to assist the Fund in locating the items requested in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in § 1805.200 by providing the information requested in this paragraph (b). The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b).

(1) *Primary mission.* (i) A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant and its Affiliates are principally directed:

(A) Within the geographic boundaries of an Investment Area(s);

(B) To members of a Targeted Population(s);

(C) To projects that provide significant benefits to residents of an Investment Area(s) or members of a Targeted Population(s); or

(D) To any combination of the above. The Fund may consider other factors, either in the alternative or in addition to those mentioned above, as it deems appropriate.

(ii) Using indicators selected by the Applicant that are appropriate given the nature of the products and services it (and its Affiliates) offers, an Applicant shall provide information pertinent to an evaluation of whether the activities of the Applicant and each Affiliate, when viewed collectively (as a whole), are principally directed in the manner described in paragraph (b)(1)(i) of this section.

(iii) An Applicant shall provide the information requested in paragraph (b)(1)(ii) of this section in accordance with paragraph (c) of this section.

(2) *Target markets.* Using the information in paragraph (b)(1) of this section that is submitted for the Applicant (excluding information on any Affiliates), an Applicant shall

demonstrate that its total activities are principally directed to serving Investment Area(s), Targeted Population(s) or both.

(3) *Designation.* An Applicant shall provide a description of the Investment Area(s) or Targeted Population(s) to be served. If an Applicant is serving:

(i) An Investment Area(s), it shall submit:

(A) A completed Investment Area Designation worksheet contained in the application packet;

(B) A map of the designated area(s); and

(C) Studies or other analyses as described in § 1805.301(e);

(ii) A Targeted Population(s), it shall submit:

(A) In the case of a Low Income Targeted Population, a description of the service area from which the Low Income Targeted Population is drawn (which could be, for example, a local, regional or national service area); or

(B) In the case of a Targeted Population defined other than on the basis of Low Income, studies or other analyses that provide adequate evidence of lack of adequate access to loans or equity investments.

(4) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of loans, Development Investments, and/or similar financing. An Applicant can demonstrate that it is such an entity if it is a(n):

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization which is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, annual reports, organizing documents, and any other information submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's institutional type, total asset size, and stage of organizational development.

(ii) An Applicant described under:

(A) Paragraph (b)(4)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(4)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(4)(i)(C) of this section shall submit a copy of its balance sheets and income and expense

statements (and any notes or other supplemental information to its financial statements) as described in paragraph (d)(2)(i) of this section which clearly document its assets, liabilities, and net worth that are dedicated to lending and Development Investments and an explanation of how such assets, liabilities and net worth support these activities. An Applicant shall provide the information specified in this paragraph (b)(4)(ii)(C) for such periods as specified in paragraph (c) of this section.

(5) *Development Services.* An Applicant shall submit a summary description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(6) *Accountability.* An Applicant shall describe how it has and will maintain accountability to the residents of the Investment Area(s) or Targeted Population(s) it serves.

(7) *Non-government.* An Applicant shall submit articles of incorporation (or comparable organizing documents), charter, bylaws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(8) *Ownership.* An Applicant shall submit information indicating the portion of shares of all classes of voting stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

(9) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(i) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(ii) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(10) *Previous history.* An Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall:

(i) Describe its activities, operations and community benefits created for residents of the Investment Area(s) or Targeted Population(s) for such periods as described in paragraph (c) of this section; and

(ii) Demonstrate that the Applicant will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in paragraphs (b)(1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in paragraphs (b)(1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for each full fiscal year since its inception; or

(3) For less than one year (including a start-up organization), shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan shall demonstrate that the Applicant shall have the capacity to operate as a CDFI upon receiving financial assistance from the Fund pursuant to this part. The Plan should include projections that are appropriate given an Applicant's current and anticipated organizational type, total asset size, and stage of organizational development.

(1) *Executive summary.* An Applicant shall provide an executive summary of the Comprehensive Business Plan which includes a description of the institution (including relationships to any Affiliates), markets served or to be served, community needs, and other pertinent information.

(2) *Financial performance.*—(i) *Historic performance.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. Such statements should include balance sheets, income and expense statements, and a capitalization statement (which includes information on changes in capital structure and funding from outside sources) for the Applicant. The Applicant shall provide information necessary to assess trends in financial and operating performance (e.g., portfolio delinquencies, defaults and charge-offs, origination volume and volume of loans closed, annual or cumulative operating ratios).

(ii) *Future projections.* An Applicant shall submit projections for each of the next five years which includes balance sheet projections, income and expense projections, operating budgets,

capitalization projections, estimates of the volume of new activity to be achieved assuming that assistance is provided by the Fund, and a description of any assumptions that underlie its projections.

(iii) *Financial statements.* (A) An Applicant shall submit:

(1) Audited financial statements;

(2) Financial statements that have been reviewed by a certified public accountant; or

(3) Financial statements that have been reviewed by the Applicant's Appropriate Federal Banking Agency.

(B) All financial statements must utilize accrual based accounting methods. All historic financial statements shall be reported on the basis of the Applicant's fiscal year.

(iv) *Financial management policies.* An Applicant shall submit information on its financial management policies that describe its methodologies for underwriting and approving loans and investments and managing and monitoring its portfolio, internal operations, and capitalization needs.

(3) *Management capacity.* An Applicant shall provide information on the background and capacity of its management team, including the relevant background and expertise of management (such as resumes or statements of personal history), key personnel and governing board members, if appropriate. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(4) *Market analysis.* An Applicant shall provide an analysis of its target markets. An Applicant must:

(i) Describe its proposed target market(s), including a description of the characteristics of the Investment Area(s) (e.g., location, boundaries, economic characteristics, relationships to Metropolitan, non-Metropolitan, or regional markets) or Targeted Population(s) (e.g., number of persons, income, and other socio-economic characteristics), its methodology for selecting such target market(s), the size of the market(s), and any relevant market trends;

(ii) Describe the products and services (and corresponding pricing) it proposes to provide and analyze the competitiveness of such products and services in the target market(s); and

(iii) Identify and analyze any characteristics of the target market(s) that will create opportunities or present impediments for its products, services and overall market strategy (e.g., economic conditions, perceived or

documented credit needs or Financial Service needs, market activity, neighborhood perceptions, government services or delivery systems, community institutions, or strength of the employment base).

(5) *Strategy.* An Applicant shall describe its strategy for delivering its products and services to its target market(s). An Applicant may also describe any product or service development activities that are necessary before undertaking its strategy including the nature, scope, cost, timing, and risks of such activities. An Applicant shall also describe anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds.

(6) *Coordination strategy.* An Applicant shall describe:

(i) Its plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs and private sector resources;

(ii) How its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s); and

(iii) How it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide loans, equity investments, secondary markets, or other services to an Investment Area(s) or a Targeted Population(s).

(7) *Projected community impact.* An Applicant shall provide an estimate of the benefits expected to be created within its Investment Area(s) or Targeted Population(s) over the next five years, as indicated by the extent to which:

(i) The Applicant will concentrate its activities within an Investment Area(s) or among Targeted Population(s);

(ii) The Applicant's activities will expand economic opportunity (e.g., number of jobs created, jobs retained, businesses financed, business ownership opportunities facilitated, residents of Investment Area(s) or members of Targeted Population(s) employed, number or dollar amount of business loans and investment originations);

(iii) The Applicant's activities will facilitate revitalization (e.g., number of square feet of commercial space financed, dollar amount of commercial real estate loan originations, indicators of demand for such commercial space (e.g., market vacancy rates, pre-leased tenants, number of long term leases), number and square feet of Community Facility space financed, number of long

term leases, and dollar amount of Community Facility loan originations);

(iv) The Applicant's activities will promote affordable housing (e.g., number of affordable rental units, dollar amount of affordable rental housing loans originated, information on the demand for such housing (e.g., market vacancy rates, number of people on public and assisted housing waiting lists), information on the type or size of units and the people who will reside in such units (e.g., families, special needs populations), number of homes purchased and dollar amount of home ownership loan originations);

(v) The Applicant will provide Development Services (as measured by the number of individuals that will receive Development Services); and

(vi) The Applicant will provide Financial Services (as measured by the number of new customers of Financial Services (e.g., individuals opening checking and savings accounts). In addition, the Applicant shall provide such other indicators as deemed appropriate by the Applicant or the Fund.

(8) *Community need.* An Applicant may provide information on the extent of economic distress within its Investment Area(s) or needs of its Targeted Population(s) to supplement the data required pursuant to subpart C of this part and paragraph (b)(3) of this section. Such information may be from sources other than the 1990 decennial census.

(9) *Funding sources.* An Applicant shall provide information:

(i) On its current and projected sources of capital and other financial support;

(ii) To demonstrate that it has a plan for achieving or maintaining financial viability within the five-year period; and

(iii) To demonstrate that it will, to the maximum extent appropriate, increase self-sufficiency. Such information shall demonstrate that the Applicant will not be dependent upon future awards from the Fund for continued viability.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an

application with a Community Partner, the Applicant shall:

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.802(b)(4);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart H of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(e) *Matching funds.* (1) An Applicant shall submit a detailed description of its plans for raising matching funds and likely or committed sources of funds to match the amount of financial assistance requested from the Fund. An Applicant shall indicate the extent to which such matching funds will be derived from private, nongovernment sources.

(2) An Applicant shall submit a description of any matching funds previously obtained or legally committed. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, if applicable, the extent to which, and for what purpose, such matching funds have been used to date, and terms and restrictions on use for each matching source, including any restriction that might reasonably be construed as a limitation on the ability of the Applicant to use the funds for matching purposes. The application shall include copies of any agreements, memoranda of understanding, letters of intent, or similar documents pertaining to matching funds.

(3) If an Applicant intends to use retained earnings to meet the matching funds requirements, it shall provide the information described in paragraph (d)(2)(iii) of this section and a copy of its tax returns for the same period, or, in the case of an Insured Credit Union, a copy of its most recent Form 5300 that has been submitted to the National Credit Union Administration. The Applicant shall submit a certification from its governing body:

(i) As to the amount and form of retained earnings available as matching funds; and

(ii) That such earnings will be used for the purposes described in its application.

(4) If the Applicant is requesting a "severe constraints waiver" of any matching requirements, it shall submit the information requested in § 1805.602.

(f) *Support.* An Applicant shall provide information to demonstrate the extent of support (if any) within the Investment Area(s) or Targeted Population(s) for its activities.

(g) *Community Ownership and Governance.* An Applicant shall provide information to demonstrate whether it is Community-Owned or Community-Governed.

(h) *Conflict of interest.* An Applicant shall submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.906.

(i) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(j) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.907; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

Subpart H—Evaluation and Selection of Applications

§ 1805.800 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s), that is intended to:

(a) Ensure that Applicants are evaluated on a competitive basis in a fair and consistent manner;

(b) Ensure that all Awardees satisfy quality standards; and

(c) Take into consideration the unique characteristics of institutions that vary by institution type, total asset sizes, stage of organizational development, markets served, products and services provided, and location.

§ 1805.801 Geographic diversity.

In selecting Awardees, the Fund shall seek to fund a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

§ 1805.802 Evaluation of Applications.

(a) *Eligibility and Completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described under § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional or supplemental information from the Applicant, if it deems it appropriate.

(b) *Substantive Review.* In evaluating and selecting Applicants, the Fund will evaluate factors including the following:

(1) *Financial Strength and Organizational Capacity.* The Fund will examine several criteria in evaluating financial and organizational capacity and an Applicant's likelihood of success in meeting the goals of its Comprehensive Business Plan. These criteria will include the experience, strength and background of an Applicant's management team and other key personnel, the quality of its financial management policies and practices, the breadth and depth of its financial resources, the quality of its Comprehensive Business Plan, and trends in financial and operating performance.

(2) *External resources.* The Fund will evaluate the extent of external resources available to an Applicant based on:

(i) The amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the matching funds in a timely manner;

(ii) The extent to which the matching funds are, or will be, derived from private sources or new investments;

(iii) Whether an Applicant is, or will become, an Insured CDFI; and

(iv) The extent to which an Awardee will use assistance to expand the funds available for lending and equity investments beyond the sum of the award and the matching funds.

(3) *Community impact.* The Fund will evaluate an application's community impact based on:

(i) The extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria;

(ii) The extent to which an Applicant will concentrate its activities on serving

Investment Area(s) or Targeted Population(s);

(iii) The extent of need for loans, equity investments, Development Services, and Financial Services within the designated Investment Area(s) or Targeted Population(s);

(iv) The extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Investment Area(s) or Targeted Population(s);

(v) The extent of support from the designated Investment Area(s) or Targeted Population(s);

(vi) The extent to which an Applicant is, or will be, Community-Owned or Community-Governed;

(vii) The extent to which an Applicant will increase its resources through such means as a Community Partnership, participation in the secondary market, and coordination with other institutions (e.g., a local Empowerment Zone or Enterprise Community coordinating entity);

(viii) The extent and nature of the potential community development impact that will be catalyzed by the Fund's assistance, relative to the amount of such assistance to be provided; and

(ix) In the case of an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s), the extent of success in serving them.

(4) *Community Partnerships.* Community Partnerships will be evaluated based on the extent to which the Applicant and Community Partner meet the factors described in paragraphs (b)(1), (2) and (3) of this section and giving consideration to the extent to which:

(i) The Community Partner will participate in carrying out the activities of the Community Partnership;

(ii) The Community Partnership will enhance the likelihood of success of the Comprehensive Business Plan; and

(iii) Service to an Investment Area(s) or Targeted Population(s) will be better performed by a Community Partnership than by an Applicant alone.

(5) *Other factors.* The Fund may consider any other factors with respect to any application as it deems appropriate.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund shall consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of

an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart I—Terms and Conditions of Assistance

§ 1805.900 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.901 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under section 8 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment

Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.902 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursement of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.903 Data collection and reporting.

(a) *Data—general.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable).

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement.

(2) An Awardee shall submit a report within 45 days after the end of each calendar quarter, or within some other period after the end of each calendar quarter as may be agreed to in the Assistance Agreement, with information on, unless otherwise determined by mutual agreement between the Awardee and the Fund, the performance of its loans, Development Investments, Development Services, and Financial Services in the previous quarter, and unaudited financial statements. Such report shall include key indicators of portfolio performance, including volume of originations, delinquencies, and defaults, and charge-offs for the previous quarter.

(3) An Awardee shall submit a report within 60 days after the end of each Federal fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement, with:

(i) Information on its customer profile and the performance of its loans, Development Investments, Development Services, and Financial Services for the previous year;

(ii) Information on its portfolio performance, including volume of originations, delinquencies, and defaults and charge-offs for the previous year;

(iii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(iv) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement;

(v) Certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and

(vi) Its most recent audited financial statements prepared by an independent certified public accountant. Such statements shall cover the operations of the Awardee's most recently completed fiscal year. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Office's Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A-133 ("Audits of Institutions of Higher Education and Other Nonprofit Institutions"), as applicable.

(4) The Fund shall make reports described in paragraph (e)(2) and (e)(3) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.*

(1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency

under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) of this section shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503; and

(2) General Accounting Office materials may be obtained from GAO

Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

§ 1805.904 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.905 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§ 1805.906 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Development Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Development Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.907 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or

modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.908 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Awardees and Insiders.

§ 1805.909 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.910 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.911 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

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