

**DEPARTMENT OF THE TREASURY****Community Development Financial Institutions Fund****12 CFR Part 1805****RIN 1505-AA92****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) administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial and technical assistance in the form of grants, loans, equity investments and deposits to CDFIs selected through a merit-based application process. The Fund provides such assistance to CDFIs to enhance their ability to make loans and investments, and to provide related services for the benefit of designated investment areas, targeted populations, or both. In order for an organization to qualify as a CDFI, the organization must meet specific eligibility criteria. One such criterion is that the organization shall have a primary mission of promoting community development. This revised interim rule: Revises the primary mission eligibility test to comply with the plain meaning of the Community Development Banking and Financial Institutions Act of 1994 (the Act); reduces the frequency of previously approved collections of information by replacing semi-annual reporting requirements with annual reporting requirements; clarifies the terms and conditions underlying an award of assistance prior to the execution of an assistance agreement; achieves regulatory economy and efficiency by deleting references to application content requirements and

other matters that have been and will continue to be thoroughly addressed in the various applications and in the Notices of Funds Availability (NOFA); and makes other technical and clarifying changes that the Fund believes will generally inure to the benefit of CDFIs and entities proposing to become CDFIs.

**DATES:** Revised interim rule effective February 4, 2003; comments must be received in the offices of the Fund on or before April 7, 2003.

**ADDRESSES:** You may send hard copy comments concerning this interim rule to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. You may also send us comments by e-mail at [reg\\_comments@cdfi.treas.gov](mailto:reg_comments@cdfi.treas.gov). When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at <http://www.cdfifund.gov>.

**FOR FURTHER INFORMATION CONTACT:** Fredric C. Cooper, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, at (202) 622-6355. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:****I. Background**

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by 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.

The mission of the Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing,

revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to CDFIs, which specialize in serving underserved markets and the people who live there. CDFIs—while highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Under the CDFI Program, the Fund provides CDFIs with financial and technical assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Additionally, CDFIs are in formation or in the early stages of development in many markets underserved by traditional financial institutions, including rural and Native American communities. The CDFI Program assists such entities in acquiring technical assistance to build their capacity to serve such markets. Applicants participate in the CDFI Program through a merit-based qualitative application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. Program participants generally receive monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

On August 14, 2000, the Fund published in the **Federal Register** a revised interim rule (65 FR 49642) implementing the CDFI Program (the current rule). The deadline for the submission of comments was October 13, 2000.

**II. Comments on the August 14, 2000 Interim Rule**

By the close of the October 13, 2000 comment period, the Fund received no comments on the August 14, 2000 interim rule.

**III. Summary of Changes***Purpose*

Section 1805.100 of the current rule contains a description of the purpose of the CDFI Program. This interim rule revises such purpose to conform to the purpose set forth in Section 102 of the Act (12 U.S.C. 4701(b)).

### Summary

Section 1805.101 of the current rule provides that the Fund will select Awardees to receive financial and technical assistance through a competitive application process. The Fund is considering evaluating applications, particularly those for technical assistance, through a merit-based qualitative application process in which the Fund may evaluate applications on a stand-alone basis in lieu of a larger competitive process in order to expedite funding decisions. Accordingly, § 1805.101 of this interim rule provides that the Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. This interim rule contains similar conforming changes to §§ 1805.303(d) and 1805.700(a).

### Definitions

Section 1805.104 of the current rule contains a list of definitions. This interim rule revises § 1805.104 by adding definitions of the following two terms: "Control" and "Voting Securities." The two new definitions are intended to clarify the meaning of the term "Affiliate," which is defined in § 1805.104(b) of the current rule. Section 1805.104(b) of the current rule defines "Affiliate" as any company or entity that controls, is controlled by, or is under common control with another company. The definition of "Affiliate" is derived from Section 103 of the Act (12 U.S.C. 4702(3)), which incorporates the definition of "Affiliate" contained in the Bank Holding Company Act (BHCA) (12 U.S.C. 1841(k)). Because the definition of "Affiliate" is derived from the BHCA, the Fund's definition of "Control" in this interim rule is likewise derived from the BHCA (12 U.S.C. 1841(a)(2)) and the BHCA implementing regulations (12 CFR 225.2(e)(1)). The definition of "Voting Securities," which is referenced in the definition of "Control," is derived from the definition contained in the BHCA implementing regulations (12 CFR 225.2(g)). The addition of these two definitions in this interim rule does not reflect a change in Fund policy or procedure, because the Fund has consistently looked to such BHCA definitions to guide it in determining whether one company is an Affiliate of another company.

### Applicant Eligibility

Section 1805.200(a)(2) of the current rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if its application

materials provide a realistic course of action to ensure that it will meet the CDFI eligibility tests within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The current interim rule reflects the Fund's practice of allowing entities to apply for certification and funding at the same time. The Fund intends to change such practice by requiring the submission of an application for certification in advance of the submission of an application for funding for some CDFI Program components. The policy goal of this bifurcated process is to facilitate the allocation of Fund staff resources for purposes of making eligibility and award decisions on a timelier basis. In furtherance of this same policy goal, the Fund also seeks the ability to require an entity to be certified as a CDFI prior to such entity's submission of an application for funding under some CDFI Program components. Accordingly, § 1805.200(a)(2) of this interim rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund receives an application for certification from the entity within the time period set forth in an applicable NOFA, and the Fund determines that such application materials provide a realistic course of action to ensure that it will meet the CDFI eligibility tests within the period set forth in an applicable NOFA. Section 1805.200(a)(2) of this interim rule also provides that the Fund reserves the right to require an entity to have been certified as a CDFI prior to its submission of an application for assistance under the CDFI Program, as set forth in an applicable NOFA.

### Primary Mission Eligibility Test

Section 1805.201(b)(1) of the current rule provides that in order for an entity to qualify as a CDFI, such entity shall have a primary mission of promoting community development. Section 1805.201(b)(1) of the current rule also provides that in determining whether an entity has such a primary mission, the Fund will consider whether the activities of such entity individually and such entity and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of distressed communities. The Fund believes that the primary mission eligibility test in the current rule does not comply with the plain meaning of the definition of "CDFI" contained in Section 103 of the Act. Section 103 of

the Act (12 U.S.C. 4702(5)(A)(i)) provides, in pertinent part, that the term "CDFI" means a person (other than an individual) that has a primary mission of promoting community development. The Fund believes that if Congress had intended that the primary mission eligibility test to apply to an entity on a collective basis with the entity's Affiliates, Congress would have so specified as it did elsewhere in Section 103 of the Act (12 U.S.C. 4702(5)(B) and (C)) with regard to entities that are Depository Institution Holding Companies, Subsidiaries or Affiliates of Depository Institution Holding Companies, and Subsidiaries of Insured Depository Institutions. Moreover, the Fund believes that this interim rule reflects a sound policy approach in that it will facilitate the ability of venture capital companies to qualify as CDFIs. Under the current rule, venture capital companies, which might meet all of the other CDFI eligibility tests, might not meet the primary mission eligibility test if their Affiliate portfolio companies do not have a primary mission of promoting community development. Accordingly, under § 1805.201(b)(1) of this interim rule, in determining whether an entity has a primary mission of promoting community development, the Fund will only consider the activities of the entity individually, and no longer take into account, except where required by the Act, the activities of an entity's Affiliates.

### Certification As A CDFI

Section 1805.201 of the current rule describes, among other things, the application content requirements for an entity to be certified by the Fund as a CDFI. This interim rule deletes such application content requirements for purposes of regulatory economy and efficiency, because they are already contained in and will continue to be contained in the certification application.

### Target Market—Investment Area

Section 1805.201(b)(3)(ii)(A)(3) of the current rule provides that a geographic area will be considered an eligible Investment Area if it 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). The Fund has decided to clarify this Investment Area eligibility requirement for purposes of accurately reflecting the Fund's longstanding interpretation of such requirement. Accordingly, § 1805.201(b)(3)(ii)(A)(3) of this interim rule clarifies that a geographic area will be considered an eligible Investment

Area if it wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community.

Section 1805.201(b)(3)(ii)(A)(2) of the current rule provides that in order for a geographic area to qualify as an Investment Area, it must generally meet one of the objective criteria of economic distress set forth in § 1805.201(b)(3)(ii)(D) of the current rule. Section 1805.201(b)(3)(ii)(D) of the current rule contains a list of five economic distress criteria. In § 1805.201(b)(3)(ii)(D)(4) of the current rule, one criterion is that the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) in the geographic area is at least 20 percent. The Fund has determined that such criterion is no longer necessary, because the Fund has found that geographic areas that meet the occupied distressed housing criterion also meet one or more of the other economic distress criteria. The Fund thus believes that the deletion of the occupied distressed housing criterion will have no substantive adverse effect on a geographic area qualifying as an Investment Area. Accordingly, this interim rule deletes the occupied distressed housing criterion for purposes of regulatory economy and efficiency.

Section 1805.201(b)(3)(ii)(D)(5)(i) of the current rule contains an Investment Area distress criterion that for areas located outside of a Metropolitan Area, the county population loss in the period between the most recent decennial census and the previous decennial census is at least 10 percent. The Fund has determined that this 10 percent threshold figure is no longer applicable in light of the fact that the most recent decennial census indicates that only a small fraction of such counties experienced such a loss between 1990 and 2000.

In addition, § 1805.201(b)(3)(ii)(D)(5)(ii) of the current rule contains an Investment Area distress criterion that for areas located outside of a Metropolitan Area, the county net migration loss over the five year period preceding the most recent decennial census is at least five percent. In light of the most recent decennial census data, the Fund believes that this distressed criterion is no longer an accurate measure of an area's economic distress. Accordingly, this interim rule deletes the county population loss and county net migration loss distress criteria for purposes of regulatory economy and efficiency.

#### *Matching Funds—Retained Earnings*

Section 1805.504(d)(4)(i)(A) of the current rule provides that an Assistance Agreement with insured credit union Awardees that seek to use as matching funds retained earnings in the form of their net capital accumulated since inception shall require that such Awardees increase their member and/or nonmember shares by an amount that is at least equal to four times the amount of retained earnings that is committed as matching funds. The Fund believes that this four-fold increase is excessive and unduly burdensome for many small insured credit union Awardees that face incremental, rather than large-scale growth. In previous NOFAs under the Small and Emerging CDFI Assistance Component, the Fund waived the four-fold requirement and in its place held "small and emerging" insured credit union Awardees to a two-fold requirement. However, the Fund believes that the flexibility to vary the amount of such increases should be codified in this interim rule. Accordingly, § 1805.504(d)(4)(i)(A) of this interim rule is revised to require insured credit union Awardees, which seek to use net capital accumulated since their inception as matching funds, to increase their member and/or nonmember shares by an amount set forth in an applicable NOFA.

Section 1805.504(d)(4)(i)(B) of the current rule requires the increase in member and/or nonmember shares to be achieved within 24 months from September 30 of the calendar year in which the applicable application deadline falls. The Fund believes that this time frame needs to be shortened by three months so that if an Awardee fails to timely achieve the increase, the Fund can make a corresponding reduction in the award amount and then utilize the freed up funds to make additional awards on or before September 30, which is the last date that such funds will generally be available to make awards. Accordingly, § 1805.504(d)(4)(i)(B) of this interim rule is revised to require insured credit union awardees, which seek to use net capital accumulated since inception, to increase their member and/or nonmember shares within 24 months from June 30 of the calendar year in which the applicable application deadline falls.

#### *Application Contents*

Section 1805.601 of the current rule describes the Application content requirements for entities seeking financial and/or technical assistance. This interim rule deletes § 1805.601 for

purposes of regulatory economy and efficiency, because such requirements are already contained in and will continue to be contained in the applicable applications.

#### *Evaluation of Applications*

Section 1805.701(b) of the current rule describes the criteria that the Fund will consider in evaluating applications for assistance. Section 1805.701(b)(9) of the current rule provides that the Fund will consider on the one hand the extent of need for the Fund's assistance, and on the other hand, in the case of an Applicant that has previously received assistance under the CDFI Program, the Applicant's level of success in meeting, among other things, its performance goals and whether it will expand its activities. The latter is derived from Section 105 of the Act (12 U.S.C. 4704(b)(4)). The Fund has decided to bifurcate these two criteria for purposes of clarity. Accordingly, § 1805.701(b)(10) of this interim rule contains the criterion by which the Fund will evaluate, in the case of an Applicant that has previously received assistance under the CDFI Program, its level of success and whether it will expand its activities.

#### *Notice of Award—Terms and Conditions of Assistance*

Section 1805.801 of the current rule provides that prior to providing any assistance, the Fund and an Awardee shall enter into an Assistance Agreement. Section 1805.801 of the current rule also describes the terms and conditions of an Assistance Agreement. However, there is a gap in the current rule between the evaluation and selection of an Applicant and the Applicant's entering into an Assistance Agreement with the Fund. To fill this gap, the Fund is adding a new section to this interim rule that essentially codifies the terms and conditions contained in the Notices of Award executed by the Fund and each Awardee under the CDFI Program. Specifically, § 1805.801 of this interim rule provides that once an Applicant has been selected to receive assistance, the Fund and the Awardee will generally execute a Notice of Award. Section 1805.801 of this interim rule also provides that the Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance, and that the Fund may terminate the Notice of Award or take other actions in the event of, among other things, Awardee fraud, Awardee mismanagement, or Awardee noncompliance with the terms of any

previous Assistance Agreement entered into with the Fund.

#### *Assistance Agreement; Sanctions*

Section 1805.801(b) of the current rule provides that an Awardee shall comply with mutually negotiated performance goals. However, § 1805.801(b) does not describe the types of performance goals to which an Awardee and the Fund may mutually agree. Accordingly, § 1805.802(b) of this interim rule adds an illustrative list of the types of performance goals that may be mutually agreed to.

Section 1805.801(c) of the current rule states that an Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations, or noncompliance with the Assistance Agreement on the part of an Awardee, the Fund, in its discretion, may impose one or more sanctions. Section 1805.801(c)(7) of the current rule contains a catch-all sanction in that it authorizes the Fund to take any other action as permitted by the terms of the Assistance Agreement. The enumerated sanctions in § 1805.801(c) of the current rule are derived from Section 109 of the Act (12 U.S.C. 4707(f)(2)(C)), which commits to the Fund's discretion the ability to impose sanctions on an Awardee in the case of fraud, mismanagement or noncompliance. Section 109 of the Act (12 U.S.C. 4707(f)(2)(C)(vii)) also contains a catch-all sanction in that it confers upon the Fund the discretion to "take such other actions as the Fund deems appropriate." The Fund has decided to revise the catch-all sanction contained in the current rule to conform to the plain language of the Act. Accordingly, § 1805.802(c)(7) of this interim rule is revised to authorize the Fund to take such other actions, as the Fund deems appropriate.

Section 1805.801(d) of the current rule provides that in the case of an Insured Depository Institution, the Assistance Agreement shall provide that the Act, the implementing regulations and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 by the Appropriate Federal Banking Agency. Section 1805.801(d) of the current rule is derived from Section 119 of the Act (12 U.S.C. 4717(b)), which provides that the Act, the implementing regulations, and agreements entered into under the Act are enforceable by the Appropriate Federal Banking Agency in the case of an Insured CDFI. The Fund seeks to revise § 1805.801(d) of the current rule to conform to the plain meaning of the Act. Accordingly, § 1805.802(d) of this interim rule is revised by replacing

"Insured Depository Institution" with "Insured CDFI."

#### *Reporting*

Section 1805.803(e)(2) of the current rule requires each Awardee to submit semi-annual reports consisting of internal financial statements and information on its compliance with its financial soundness covenants. The Fund believes that these semi-annual reporting requirements are unduly burdensome, and has decided to reduce the frequency of such reporting from semi-annually to annually. Accordingly, § 1805.804(e)(2) of this interim rule requires each Awardee to submit to the Fund its fiscal year end unaudited statements of financial condition on an annual basis.

#### **IV. Rulemaking Analysis**

##### *Executive Order (E.O.) 12866*

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

##### *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.

##### *Paperwork Reduction Act*

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559-0006. 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. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005 and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

##### *National Environmental Policy Act*

Pursuant to Treasury Directive 75-02 (Department of the Treasury Environmental Quality Program), the

Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

#### *Administrative Procedure Act*

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

#### *Comment*

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

#### *Catalog of Federal Domestic Assistance Number*

Community Development Financial Institutions Program—21.020.

#### **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.

For the reasons set forth in the preamble, 12 CFR part 1805 is revised 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—Use of Funds/Eligible Activities**

- 1805.300 Purposes of financial assistance.
- 1805.301 Eligible activities.
- 1805.302 Restrictions on use of assistance.
- 1805.303 Technical assistance.

#### **Subpart D—Investment Instruments**

- 1805.400 Investment instruments—general.
- 1805.401 Forms of investment instruments.
- 1805.402 Assistance limits.
- 1805.403 Authority to sell.

#### **Subpart E—Matching Funds Requirements**

- 1805.500 Matching funds—general.

- 1805.501 Comparability of form and value.
- 1805.502 Severe constraints waiver.
- 1805.503 Time frame for raising match.
- 1805.504 Retained earnings.

#### **Subpart F—Applications for Assistance**

- 1805.600 Notice of Funds Availability.

#### **Subpart G—Evaluation and Selection of Applications**

- 1805.700 Evaluation and selection—general.
- 1805.701 Evaluation of Applications.

#### **Subpart H—Terms and Conditions of Assistance**

- 1805.800 Safety and soundness.
- 1805.801 Notice of Award
- 1805.802 Assistance Agreement; sanctions.
- 1805.803 Disbursement of funds.
- 1805.804 Data collection and reporting.
- 1805.805 Information.
- 1805.806 Compliance with government requirements.
- 1805.807 Conflict of interest requirements.
- 1805.808 Lobbying restrictions.
- 1805.809 Criminal provisions.
- 1805.810 Fund deemed not to control.
- 1805.811 Limitation on liability.
- 1805.812 Fraud, waste, and abuse.

**Authority:** 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

#### **Subpart A—General Provisions**

##### **§ 1805.100 Purpose.**

The purpose of the Community Development Financial Institutions Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

##### **§ 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 merit-based qualitative 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 a Bank Enterprise Award under the Bank

Enterprise Award Program (part 1806 of this chapter) if it has:

- (i) An application pending for assistance under the Community Development Financial Institutions Program;
- (ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period; or
- (iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a Bank Enterprise Award Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit 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. 1813(q)), 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 described in § 1805.200;

(h) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(i) *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;

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

(k) *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;

(l) *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;

(m) *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.*);

(n) *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);

(o) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described in an applicable Notice of Funds Availability (NOFA);

(p) *Control* means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons; (2)

Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or (3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

(q) *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. 1813(w)(1));

(r) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(s) *Equity Investment* means an investment made by an Applicant that, 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. Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), or any other investment deemed to be an Equity Investment by the Fund;

(t) *Financial Products* means: loans, Equity Investments and similar financing activities (as determined by the Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs.

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

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

(w) *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. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(x) *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;

(y) *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;

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

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

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

(cc) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(dd) *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;

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

(ff) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(gg) *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;

(hh) *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(b)(4);

(ii) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.201(b)(3); and

(jj) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

(kk)(1) *Voting Securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares*. Preferred shares, limited partnership shares or interests, or similar interests are not Voting Securities if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or

partners (or persons exercising similar functions) of the issuing company.

**§ 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 1559-0006.

**Subpart B—Eligibility**

**§ 1805.200 Applicant eligibility.**

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) 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.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund:

(i) Receives a complete application for certification from the entity within the time period set forth in an applicable NOFA; and

(ii) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within the period set forth in an applicable NOFA. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(ii) of this section, the Fund reserves the right to require an entity to have been certified as described in § 1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable NOFA.

(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 § 1805.201(b).

(b) *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 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 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 this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

**§ 1805.201 Certification as a Community Development Financial Institution.**

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI 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 paragraph (b) of this section, § 1805.200(b) or (a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) of this section and § 1805.200 by providing the information described in the application for certification demonstrating that the Applicant meets the eligibility requirements described in paragraphs (b)(1) through (b)(6) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has

satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* 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 are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

(2) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(i) Depository Institution Holding Company;

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

(iii) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(3) *Target Market.* (i) *General.* An Applicant may be found to serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

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

(1) 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); and either

(2) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, or Financial



Services as described in paragraph (b)(3)(ii)(E) of this section; or

(3) Encompasses (*i.e.* wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(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 may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(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 most recently completed decennial census 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; or

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

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the Applicant adequately demonstrate a pattern of unmet needs for loans, Equity Investments, or Financial Services within such area(s).

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

(iii) *Targeted Population.* (A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to loans, Equity Investments, or Financial Services in the Applicant's service area. 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).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products.

(5) *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.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality 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 it is not controlled by such entities and maintains independent decision-making power over its activities.

### Subpart C—Use of Funds/Eligible Activities

#### § 1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an

Awardee to provide Financial Products and Financial Services.

#### § 1805.301 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, through lending, investing, enhancing liquidity, or other means of finance:

(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.

#### § 1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only 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.

#### § 1805.303 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 the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.600.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the merit-based qualitative review criteria in subpart G of this part, except as otherwise may be provided in the applicable NOFA. In addition, the requirements for matching funds are not applicable to technical assistance requests.

#### Subpart D—Investment Instruments

##### § 1805.400 Investment instruments—general.

The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. 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.

##### § 1805.401 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) *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.

##### § 1805.402 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 be used only 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 G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

##### § 1805.403 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 E—Matching Funds Requirements

##### § 1805.500 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 § 1805.502, 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 either the CDFI Program or another Federal grant or award program may not 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.

##### § 1805.501 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 § 1805.502). 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.

##### § 1805.502 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. Additionally, not more than 25 percent of the total funds disbursed 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.

#### **§ 1805.503 Time frame for raising match.**

Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

#### **§ 1805.504 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 § 1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may 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 2001 less retained earnings at the end of fiscal year 2000); or

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

(2) Such retained earnings may 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 a Credit Union), retained earnings that may 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 may be used to match a request for a 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 may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that have 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 retained earnings that have 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, retained earnings 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 may be used to match a request for a 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 set forth in an applicable NOFA; and

(B) Such increase be achieved within 24 months from June 30 of the calendar year in which the applicable application deadline falls (or such other date as set forth in the applicable NOFA);

(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 will be as of June 30 of the calendar year in which the applicable application deadline falls; 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) of this section 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) 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 F—Applications for Assistance**

#### **§ 1805.600 Notice of Funds Availability.**

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with 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.

### **Subpart G—Evaluation and Selection of Applications**

#### **§ 1805.700 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) and/or site visit(s), that is intended to:

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

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact;

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States; and

(e) Take into consideration other factors as described in the applicable NOFA.

#### **§ 1805.701 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 in § 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 information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (*e.g.*, in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Understanding of its market context, including its analysis of current and prospective customers, 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, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an Applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in

carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan;

(10) In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, the undisbursed balance of assistance, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities; and

(11) The Fund may consider any other factors, as it deems appropriate, in reviewing an application as set forth in an applicable NOFA.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will 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 H—Terms and Conditions of Assistance**

##### **§ 1805.800 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.

##### **§ 1805.801 Notice of award.**

(a) The Fund will generally signify its selection of an Applicant as an Awardee by delivering a signed notice of award to the Applicant. The notice of award will contain the general terms and conditions underlying the Fund's provision of assistance to an Awardee including, but not limited to, the requirement that an Awardee and the Fund enter into an Assistance Agreement.

(b) To become an Awardee under paragraph (a) of this section, an Applicant shall execute the notice of award and return it to the Fund.

(c) By executing a notice of award, an Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the Awardee's eligibility for funding, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the notice of award or take such other actions as it deems appropriate. Moreover, by executing a notice of award, an Awardee also agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is not in compliance with the terms of

any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the notice of award or take such other actions as it deems appropriate. An Awardee shall notify the Fund of information that an Awardee may reasonably believe may affect its eligibility or ability to achieve the objectives of its Comprehensive Business Plan as submitted to the Fund (such as changes in management).

(d) The Fund will notify an Awardee of either the Fund's termination of a notice of award or such other action(s) taken by the Fund under paragraph (c) of this section.

#### **§ 1805.802 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. Such performance goals may include measures that require an Awardee to:

- (1) Be financially sound;
- (2) Be managerially sound;
- (3) Maintain appropriate internal controls; and/or

(4) Achieve specific lending, investment, and development service objectives. 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 Act and 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 such other actions as the Fund deems appropriate.

(d) In the case of an Insured CDFI, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 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.

#### **§ 1805.803 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 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.

#### **§ 1805.804 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 and to evaluate the impact of the CDFI Program.

(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) General. 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. The Fund's review will generally be based on the following:

- (i) The annual report described in paragraph (e)(2) of this section;
- (ii) The audited statements of financial condition described in paragraph (e)(3) of this section; and
- (iii) The annual survey described in paragraph (e)(4) of this section.

(2) *Annual Report.* An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

- (i) A description of an Awardee's activities in support of its Comprehensive Business Plan;
- (ii) 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; and
- (iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used;
- (iv) A certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and
- (v) Fiscal year end unaudited statements of financial condition.

(3) *Audited Financial Statements.* An Awardee shall submit within 120 days after the end of its fiscal year, or within some other period as may be agreed to in the Assistance Agreement, fiscal year end statements of financial condition audited by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Office Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), as applicable.

(4) *Annual Survey.* An Awardee shall submit a report within 120 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following information:

- (i) The Awardee's customer profile;
- (ii) Awardee activities including Financial Products and Development Services;
- (iii) Awardee portfolio quality;
- (iv) The Awardee's financial condition; and
- (v) The Awardee's community development impact (which may include loan-level data).

(5) The Fund shall make reports described in paragraph (e)(2) 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 institutions 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) shall not be deemed to have waived any privilege applicable to the 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 or on

the Internet (<http://www.whitehouse.gov/OMB/grants/index.html>); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

#### **§ 1805.805 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.

#### **§ 1805.806 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.

#### **§ 1805.807 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 Equity 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 Equity 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.

#### **§ 1805.808 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.

#### **§ 1805.809 Criminal provisions.**

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

#### **§ 1805.810 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.

#### **§ 1805.811 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.

#### **§ 1805.812 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.

Dated: January 27, 2003.

**Tony T. Brown,**

*Director, Community Development Financial Institutions Fund.*

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## **DEPARTMENT OF THE TREASURY**

### **Community Development Financial Institutions Fund**

#### **12 CFR Part 1806**

**RIN 1505-AA91**

#### **Bank Enterprise Award 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 Bank Enterprise Award (BEA) Program administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within Distressed Communities and provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. This revised interim rule: improves programmatic operating efficiencies; targets program incentives to encourage the provision of investment, credit and financial services in Distressed Communities that demonstrate the most extreme need, to CDFIs that serve such Distressed Communities, and to smaller, less well capitalized CDFIs; reduces applicants' documentary and reporting burdens; clarifies and redefines the requirements of certain Qualified Activities; redefines and adds new categories of Qualified Activities; changes some methodologies for calculating BEA Program awards, including the application of caps to such awards; and simplifies some reporting and documentation requirements.

**DATES:** Interim rule effective February 4, 2003; comments must be received on or before April 7, 2003.

**ADDRESSES:** You may send hard copy comments concerning this interim rule to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department