

Community Development Financial Institutions Fund

§ 1805.801

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 Notice of Funds Availability.

(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) *Consultation with Appropriate State Agencies.* Prior to providing assistance to a State-Insured Credit Union, the Fund may consult with, and consider the views of, the Appropriate State Agency.

(e) *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 Notice of Funds Availability.

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 or Appropriate State 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)

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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 or an Affiliate 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, as applicable. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement. Performance goals for State-Insured Credit Unions may be determined in consultation with the Appropriate State Agency, if deemed appropriate by the Fund.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act and the Fund's regulations, or non-compliance 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 re-applying 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, as applicable, 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