

**Federal Housing Enterprise Oversight, HUD****§ 1780.81**

U.S. code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1) .....	First Tier .....	6,500
12 U.S.C. 4636(b)(2) .....	Second Tier (Executive Officer or Director) .....	11,000
12 U.S.C. 4636(b)(2) .....	Second Tier (Enterprise) .....	32,500
12 U.S.C. 4636(b)(3) .....	Third Tier (Executive Officer or Director) .....	130,000
12 U.S.C. 4636(b)(3) .....	Third Tier (Enterprise) .....	1,275,000

**§ 1780.81 Applicability.**

The inflation adjustments in §1780.80 apply to civil money penalties assessed in accordance with the provisions of 12

U.S.C. 4636 for violations occurring after the effective date, August 30, 2005.

**PARTS 1781–1799 [RESERVED]**



# CHAPTER XVIII—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, DEPARTMENT OF THE TREASURY

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<i>Part</i>		<i>Page</i>
1805	Community Development Financial Institutions Program .....	623
1806	Bank Enterprise Award Program .....	641
1807	Capital magnet fund .....	650
1815	Environmental quality .....	665



## **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.

SOURCE: 70 FR 73888, Dec. 13, 2005, unless otherwise noted.

### **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 (BEA) 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 prior to the

date the Fund selected the CDFI to receive a Bank Enterprise Award (meaning, the date of the Fund's BEA Program notice of award); 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 BEA 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 CDFI Program assistance or funding 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 includes, with respect to Insured Credit Unions, the National Credit Union Administration;

(e) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

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

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

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

(i) *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;

(j) *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;

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

(l) *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;

(m) *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;

(n) *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 State-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.*);

(o) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide Financial Products or Development Services to an Investment Area(s) or a Targeted Population(s);

(p) *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 (NOTICE OF FUNDS AVAILABILITY);

(q) *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.

(r) *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));

(s) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products or Financial Services 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;

(t) *Equity Investment* means an investment made by an Applicant that, in the judgment of the Fund, supports or enhances activities that serve an Investment Area(s) or a Targeted Popu-

lation(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 may 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), a purchase of secondary capital, or any other investment deemed to be an Equity Investment by the Fund;

(u) *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, emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs.

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

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

(x) *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;

(y) *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;

(z) *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;

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

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

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

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

(ee) *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;

(ff) *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;

(gg) *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, Insured Credit Union, or State-Insured Credit Union;

(hh) *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 Virgin Islands, and the Northern Mariana Islands;

(ii) *State-Insured Credit Union* means any credit union that is regulated by,

and/or the member accounts of which are insured by, a State agency or instrumentality;

(jj) *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);

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

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

(mm)(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



## Community Development Financial Institutions Fund

## § 1805.201

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 numbers 1559-0006, 1559-0021 and 1559-0022.

## 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)(4) 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 Notice of Funds Availability; 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 Notice of Funds Availability.

(3) 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 Notice of Funds Availability.

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

(5) 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)(4) (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 economically 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, Insured Credit Union, or State-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 anal-

ysis, 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 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;

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

(4) In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(5) In counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent.

(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 Financial Products 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 Financial Products 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 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) 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

## Community Development Financial Institutions Fund

## § 1805.500

of this part, except as otherwise may be provided in the applicable Notice of Funds Availability. 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 non-voting 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 and State-Insured Credit Unions. Deposits in an Insured CDFI or a State-Insured Credit Union shall not be subject to any requirement for collateral or security.

#### § 1805.402 Assistance limits.

(a) 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) 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

## **§ 1805.501**

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;

## **12 CFR Ch. XVIII (1–1–11 Edition)**

(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 Notice of Funds Availability.

### **§ 1805.504 Retained earnings.**

(a) An Applicant may use its retained earnings to match a request for a financial assistance grant from the Fund. An Applicant that proposes to meet all or a portion of its matching funds requirements by committing available earnings retained from its operations shall be subject to the restrictions described in this section. Retained earnings shall be calculated as directed by the Fund in the applicable Notice of Funds Availability, the financial assistance application and/or related guidance materials. Retained earnings accumulated after the end of the Applicant’s most recent fiscal year

## Community Development Financial Institutions Fund

## § 1805.700

ending prior to the appropriate application deadline may not be used as matching funds.

(b) In the case of an Applicant that is not an Insured Credit Union or a State-Insured Credit Union, retained earnings that may be used for matching funds purposes shall consist of:

(1) The increase in retained earnings (meaning, for purposes of §1805.504(b), operating income minus operating expenses less any dividend payments) that has occurred over the Applicant's most recent fiscal year (*e.g.*, retained earnings at the end of fiscal year 2003 less retained earnings at the end of fiscal year 2002); or

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

(c)(1) In the case of an Applicant that is an Insured Credit Union or a State-Insured Credit Union, retained earnings that may be used for matching funds purposes shall consist of:

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

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

(iii) The entire retained earnings that have been accumulated since the inception of the Applicant, provided that the Assistance Agreement shall require that:

(A) The Awardee shall increase its member shares, non-member shares, outstanding loans and/or other measurable activity as defined in and by an amount that is set forth in an applicable Notice of Funds Availability; and

(B) Such increase must be achieved by a date certain set forth in the applicable Notice of Funds Availability;

(C) The Applicant's Comprehensive Business Plan shall discuss its strategy for achieving the increases described in (c)(1)(iii)(A) of this section and the activities associated therewith;

(D) The level from which the achievement of said increases will be measured will be as of July 31 of the calendar year in which the applicable application deadline falls (or such other date as set forth in the applicable Notice of Funds Availability); and

(E) Financial assistance shall be disbursed by the Fund only as the amount of increases described in paragraph (c)(1)(iii)(A) of this section is achieved.

(2) The Fund will allow an Applicant to utilize the option described in paragraph (c)(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 achieving said increases to the specified amounts.

### 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 Notice of Funds Availability published in the FEDERAL REGISTER. The Notice of Funds Availability will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The Notice of Funds Availability 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 Notice of Funds Availability.

**§ 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 or a State-Insured Credit Union;

(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



## 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)

## § 1805.802

## 12 CFR Ch. XVIII (1–1–11 Edition)

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 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, 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

## Community Development Financial Institutions Fund

## § 1805.804

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 in-hand and/or firm commitments for the matching funds required for such assistance pursuant to the applicable Notice of Funds Availability. 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 that 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) *Data collection and reporting.* Each Awardee shall submit to the Fund, at least annually and within 180 days after the end of the Awardee's fiscal year, such information and documentation that will permit the Fund to review the Awardee's progress (and the progress of its Affiliates, Subsidiaries,

and/or Community Partners, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. The information and documentation shall include, but not be limited to, an Annual Report, which shall comprise the following components:

(1) *Financial Report:*

(i) All non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the Fund financial statements that have been reviewed by an independent certified public accountant in accordance with *Statements on Standards for Accounting and Review Services*, issued by the American Institute of Certified Public Accountants, no later than 180 days after the end of the Awardee's fiscal year (audited financial statements can be provided by the due date in lieu of reviewed statements, if available). Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are required to have their financial statements audited pursuant to OMB Circular A-133 *Audits of States, Local Governments and Non-Profit Organizations*, must also submit their A-133 audited financial statements to the Fund no later than 270 days after the end of the Awardee's fiscal year. Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, must submit to the Fund a statement signed by the Awardee's Authorized Representative or certified public accountant, asserting that the Awardee is not required to have a single audit pursuant OMB Circular A-133.

(ii) For-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants, no later than 180 days after the end of the Awardee's fiscal year.

(iii) Insured CDFIs are not required to submit financial statements to the Fund. The Fund will obtain the nec-

essary information from publicly available sources. State-Insured Credit Unions must submit to the Fund copies of the financial statements that they submit to the Appropriate State Agency.

(iv) If multiple organizations sign the Assistance Agreement: The Awardee may submit combined financial statements and footnotes for the Awardee and other entities that signed the Assistance Agreement as long as the financial statements of each signatory are shown separately (for example, in combining financial statements).

(v) If the Assistance is in the form of a loan or a deposit: The Awardee must provide the Fund with financial statements annually throughout the term of the loan or deposit.

(vi) If the Assistance is in the form of an equity investment (common or preferred stock, secondary capital, certificate of deposit, partnership interest, or debentures): The Awardee must provide the Fund with financial statements annually for each year in which the Fund holds the equity investment.

(2) *Performance Goals Report/Annual Survey:* Performance Goals include performance goals and measures that are specific to the Awardee's application for funding.

(i) *Performance Goals Report:* The Awardee will submit to the Fund information through the Annual Survey that will inform the Fund of its compliance toward meeting the Performance Goals set forth in the Performance Goals Report.

(ii) *Annual Survey:* The Fund will use the Annual Survey to collect data by which to assess the Awardee's compliance toward meeting its Performance Goals and the impact of the CDFI Program and the CDFI industry. The Annual Survey is comprised of two components, the Institution-Level Report and the Transaction-Level Report.

(A) *Institution-Level Report.* The Institution-Level Report includes, but is not limited to, organizational, financial, portfolio and community development impact information and any other information that the Fund deems appropriate.

(B) *Transaction-Level Report.* The Transaction-Level Report includes, but

is not limited to, specific data elements on each of the Awardee's loans and investments including, but not limited to, borrower location, loan/investment type, loan/investment amount, and terms. The Awardee must submit the Transaction-Level Report to the Fund at least annually but no more frequently than quarterly. If the Fund requires the Awardee to submit the Transaction-Level Report on a semi-annual or quarterly basis, the Fund will notify the Awardee of the due date for the submission of said report at least 60 days prior to the due date. Only Awardees that receive financial assistance awards are required to submit Transaction-Level Reports.

(3) *Financial Status Report:* The Financial Status Report is applicable only to Awardees that receive technical assistance awards and must be signed by the Awardee's authorized representative, and submitted to the Fund with the Annual Report. This form is only applicable to the technical assistance portion of the award.

(4) *Uses of Financial Assistance and Matching Funds Report:* This report describes the Awardee's use of its financial assistance award and its matching funds during its preceding fiscal year.

(5) *Explanation of Noncompliance:* Any Awardee that fails to meet a performance goal in its Performance Goals Report must submit to the Fund a narrative explanation.

(6) Awardees are responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually are completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Annual Surveys or Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided.

(7) The Fund's review of the progress of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union in implementing its

Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(8) The Fund shall make reports described in 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 and Appropriate State 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 an Appropriate Federal Banking Agency or Appropriate State Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI, State-Insured Credit Union or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI, State-Insured Credit Union, or other institution that

## § 1805.805

is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI, State-Insured Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or Appropriate State 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 (or Appropriate State Agency, as the case may be) 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 (or Appropriate State Agency, as the case may be), and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

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

(1) OMB Circulars may be obtained from the Office of Administration,

## 12 CFR Ch. XVIII (1–1–11 Edition)

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 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, a Depository Institution Holding Company or a State-Insured Credit

Union shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(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.

### **PART 1806—BANK ENTERPRISE AWARD PROGRAM**

#### **Sec.**

#### **Subpart A—General Provisions**

- 1806.100 Purpose.
- 1806.101 Summary.
- 1806.102 Relationship to other Community Development Financial Institutions Programs.
- 1806.103 Definitions.
- 1806.104 Waiver authority.
- 1806.105 OMB control number.

#### **Subpart B—Awards**

- 1806.200 Community eligibility and designation.
- 1806.201 Measuring and reporting Qualified Activities.
- 1806.202 Estimated award amounts.
- 1806.203 Selection Process, actual award amounts.
- 1806.204 Applications for Bank Enterprise Awards.

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

- 1806.300 Award Agreement; sanctions.
- 1806.302 Compliance with government requirements.
- 1806.303 Fraud, waste and abuse.
- 1806.304 Books of account, records and government access.
- 1806.305 Retention of records.

AUTHORITY: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

SOURCE: 74 FR 5791, Jan. 30, 2009, unless otherwise noted.

**Subpart A—General Provisions**

**§ 1806.100 Purpose.**

The purpose of the Bank Enterprise Award Program is to provide financial assistance to Community Development Financial Institutions, and provide an incentive for insured depository institutions to increase their activities in Distressed Communities.

**§ 1806.101 Summary.**

(a) Under the Bank Enterprise Award Program, the Fund makes awards to selected Applicants that:

(1) Increase their investments in or other support of Community Development Financial Institutions;

(2) Increase lending and investment activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum geographic, poverty and unemployment criteria.

(c) Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities and must be used for BEA Qualified Activities. All awards shall be made subject to the availability of funding.

**§ 1806.102 Relationship to other Community Development Financial Institutions Programs.**

Prohibition against double funding. A BEA Applicant may not submit as Qualified Activities any transactions funded with award proceeds from another Fund program.

**§ 1806.103 Definitions.**

For purposes of this part the following terms shall have the following definitions:

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

(b) *Affordable Housing Development Loan* means origination of a loan to finance the acquisition, construction,

and/or development of single- or multi-family residential real property, where at least sixty percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Low- and Moderate-Income Eligible Residents.

(c) *Affordable Housing Loan* means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income Eligible Resident. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or "soft second" mortgages, and other similar types of down payment assistance loans but may not necessarily be secured by such property originated for the purpose of facilitating the purchase or improvement of the borrower's primary residence, where such borrower is a Low- and Moderate-Income Eligible Resident.

(d) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(e) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(f) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability in which an Applicant will carry out, or has carried out, Qualified Activities;

(g) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;

(h) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(i) *Bank Enterprise Award (or BEA Program Award)* means an award made to an Applicant pursuant to this part;

(j) *Bank Enterprise Award (or BEA) Program* means the program authorized by section 114 of the Act and implemented under this part;

(k) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(l) *Commercial Real Estate Loan* means an origination of a loan (other than an



Affordable Housing Development Loan or Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and/or development of property in a Distressed Community, used for commercial purposes;

(m) *Community Development Entity (or CDE)* means any Qualified Community Development Entity that meets the requirements set forth at Internal Revenue Code (IRC) § 45D(c) and that has been certified as such by the Fund;

(n) *Community Development Financial Institution (or CDFI)* means an entity that has been certified as a CDFI by the CDFI Fund as of the date specified in the applicable NOFA.

(o) *Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of technical assistance and financial education to Eligible Residents regarding managing their personal finances;

(2) Provision of technical assistance and consulting services to newly formed small businesses and nonprofit organizations located in the Distressed Community;

(3) Provision of technical assistance and financial education to, or servicing the loans of, Low- or Moderate-Income homeowners and homeowners that are Eligible Residents; and

(4) Other services provided to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in a Distressed Community, as deemed appropriate by the Fund;

(p) *CDFI Partner* means a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant;

(q) *CDFI Related Activities* means Equity Investments, Equity-Like Loans and CDFI Support Activities;

(r) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the Fund in the applicable NOFA, that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(s) *Deposit Liabilities* means time or savings deposits or demand deposits, accepted from Eligible Residents at offices of the Applicant, or a Subsidiary of the Applicant, located within the Distressed Community. Depository Liabilities may only include deposits held by individuals in transaction accounts (i.e., demand deposits, NOW accounts, automated transfer service accounts and telephone or preauthorized transfer accounts) or non-transaction accounts (i.e., money market deposit accounts, other savings deposits and all time deposits), as defined by the Appropriate Federal Banking Agency;

(t) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in §1806.200, and such additional criteria as may be set forth in the applicable NOFA;

(u) *Distressed Community Financing Activities* means Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; and Small Business Loans and related Project Investments;

(v) *Education Loan* means an advance of funds to a student, who is an Eligible Resident, for the purpose of financing a college or vocational education.

(w) *Electronic Transfer Account (or ETA)* means an account meeting the requirements, and with respect to which the Applicant has satisfied the requirements, set forth in the FEDERAL REGISTER on July 16, 1999 at 64 FR 38510, as such requirements may be amended from time to time;

(x) *Eligible Resident* means an individual that resides in a Distressed Community;

(y) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of

a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the Fund;

(z) *Equity-Like Loan* means a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment which meets such criteria as set forth in the applicable NOFA;

(aa) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, new branches, and other comparable services as may be specified by the Fund in the applicable NOFA, that are provided by the Applicant to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in the Distressed Community;

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

(cc) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund;

(dd) *Home Improvement Loan* means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence;

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

(ff) *Individual Development Account (or IDA)* means an account that meets the requirements, and with respect to the provision of which Applicant has satisfied the requirements, set forth in the

U.S. Department of Health and Human Services Program Announcement OCS–2000–04, published on December 14, 1999 in the FEDERAL REGISTER at 64 FR 69824, as such requirements may be amended from time to time;

(gg) *Integrally Involved* means:

(i) For a CDFI Partner, having provided or transacted the percentage of financial transactions or dollars (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, or having attained the percentage of market share for a particular product in a Distressed Community, set forth in the applicable NOFA; or

(ii) For a non-CDFI, having directed the percentage of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant, or having provided the percentage of its business activities in said Distressed Community, set forth in the applicable NOFA.

(hh) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development, with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

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

(jj) *Notice of Funds Availability (or NOFA)* means the public notice, published by the Fund in the FEDERAL REGISTER, that announces the availability of BEA Program funds for a particular funding round and that advises Applicants with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round;

(kk) *Priority Factor* means a numeric value assigned to each type of activity

## Community Development Financial Institutions Fund

## § 1806.200

within each category of Qualified Activity, as may be established by the Fund in the applicable NOFA. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

(ll) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is Integrally Involved in a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans;

(mm) *Qualified Activities* means CDFI Related Activities, Distressed Community Financing Activities, and Service Activities;

(nn) *Service Activities* means the following activities: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products;

(oo) *Small Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) and is located in a Distressed Community;

(pp) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation;

(qq) *Targeted Financial Services* means ETAs, IDAs, and such other similar

banking products as maybe specified by the Fund in the applicable NOFA;

(rr) *Targeted Retail Savings/Investment Products* means certificates of deposit, mutual funds, life insurance and other similar savings or investment vehicles targeted to Low- and Moderate-Income Eligible Residents, as may be specified by the Fund in the applicable NOFA; and

(ss) *Unit of General Local Government* means any city, county town, township, parish, village or other general-purpose political subdivision of a State or Commonwealth of the United States, or general-purpose subdivision thereof, and the District of Columbia.

### § 1806.104 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 will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any 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.

### § 1806.105 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 1559-0005.

## Subpart B—Awards

### § 1806.200 Community eligibility and designation.

(a) *General*. If an Applicant proposes to carry out Service Activities or Distressed Community Financing Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. The Applicant may designate different Distressed Communities for each category of activity. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it

## § 1806.201

is proposing to support is Integrally Involved in a Distressed Community as specified in the applicable NOFA.

(b) *Minimum area and eligibility requirements.* A Distressed Community must meet the following minimum area and eligibility requirements:

(1) Minimum area requirements. A Distressed Community:

(i) Must be an area that is located within the jurisdiction of one (1) Unit of General Local Government;

(ii) The boundaries the area must be contiguous; and

(iii) The area must:

(A) Have a population, as determined by the most recent census data available, of not less than 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; or

(B) Have a population, as determined by the most recent census data available, of not less than 1,000 in any other case; or

(C) Be located entirely within an Indian Reservation.

(2) Eligibility requirements. A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Eligible Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census in the most recent decennial census for which data is available;

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method; and

(iii) Such additional requirements as may be specified by the Fund in the applicable NOFA.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements set forth in paragraph (b) of this section; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section, provided that no Geographic

## 12 CFR Ch. XVIII (1–1–11 Edition)

Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* The Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

### § 1806.201 Measuring and reporting Qualified Activities.

(a) *General.* An Applicant may receive a Bank Enterprise Award for engaging in any of the following categories of Qualified Activities during an Assessment Period: CDFI Related Activities, Distressed Community Financing Activities, or Service Activities. The Fund may further qualify such Qualified Activities in the applicable NOFA, including such additional geographic and transaction size limitations as the Fund deems appropriate.

(b) *Reporting Qualified Activities.* An Applicant should report only its Qualified Activities for the category in which it is seeking a Bank Enterprise Award. For example, if an Applicant is seeking a Bank Enterprise Award for Distressed Community Financing Activities only, it should report only its activities for the Distressed Community Financing Activities category.

(1) If an Applicant elects to apply for an award in either the CDFI Related Activities category or the Distressed Community Financing Activities category, it must report on all types of activity within that category unless the Applicant can provide a reasonable explanation acceptable to the Fund, in its sole discretion, as to why it cannot report on all activities in such category.

(2) If an Applicant elects to apply for an award in the Service Activities category, it may elect not to report each type of activity within the Service Activities category.

(c) *Area served.* CDFI Related Activities must be provided to a CDFI Partner Integrally Involved in a Distressed Community. Service Activities and

Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(1) Undertaken in the Distressed Community; or

(2) Provided to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in the Distressed Community.

(d) *Certain Limitations on Qualified Activities*—Activities funded with the proceeds of Federal funding or tax credit programs may be ineligible for purposes of calculating or receiving a Bank Enterprise Awards. Please see the applicable BEA NOFA for current limitations on Qualified Activities.

(e) *Measuring the Value of Qualified Activities*. Subject to such additional or alternative valuations as the Fund may specify in the applicable NOFA, the Fund will assess the value of:

(1) Equity Investments, Equity-Like Loans, loans, grants and certificates of deposits, at the original amount of such Equity Investments, Equity-Like Loans, loans, grants or certificates of deposits. Where a certificate of deposit matures and is then rolled over during the Baseline Period or the Assessment Period, as applicable, the Fund will assess the value of the full amount of the rolled over deposit. Where an existing loan is refinanced (a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant;

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described below:

(i) The Applicant shall calculate the net change in deposits during the Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the be-

ginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Applicant shall calculate the net change in such deposits during the Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(4) Financial Services and Targeted Financial Services based on the predetermined amounts as may be set forth by the Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the Fund has established a predetermined value), Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services.

(f) *Closed Transactions*. A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if the documentation evidencing the transaction:

(1) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively; and

(2) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(3) An initial cash disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction (as determined by the Fund) unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the Fund.

(g) *Reporting Period*. An Applicant may only measure the amount of a Qualified Activity that it reasonably expects to disburse to an investee, borrower, or other recipient within one

## § 1806.202

## 12 CFR Ch. XVIII (1–1–11 Edition)

year of the end of the applicable Assessment Period, or such other period as may be set forth by the Fund in the applicable NOFA.

### § 1806.202 Estimated award amounts.

(a) *General.* An Applicant shall calculate and submit to the Fund an estimated award amount as part of the Bank Enterprise Award application.

(b) *Award Percentages.* The Fund will establish the award percentage for each category of Qualified Activities in the applicable NOFA. Applicable award percentages for activities undertaken by Applicants that are CDFIs will be equal to three times the award percentages for activities undertaken by Applicants that are not CDFIs.

(c) *Calculating the estimated award amount.* The estimated award amount for each category of Qualified Activities will be equal to the applicable award percentage of the increase in the weighted value of such Qualified Activities between the Baseline Period and Assessment Period. The weighted value of the applicable Qualified Activities shall be calculated by:

(1) Subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a remainder; and

(2) Multiplying the remainder by the applicable Priority Factor (as set forth in the applicable NOFA).

(d) *Estimated Award Eligibility Review.* The Fund will determine the eligibility of each transaction for which an Applicant has applied for a Bank Enterprise Award. Based upon this review, the Fund will calculate the actual award amount for which such Applicant is eligible.

### § 1806.203 Selection Process, actual award amounts.

(a) *Sufficient Funds Available to Cover Estimated Awards.* All Bank Enterprise Awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, and an Applicant meets all of the program requirements specified in this part, then such Applicant shall receive an

actual award amount that is calculated by the Fund in the manner specified in § 1806.202.

(b) *Insufficient Funds Available to Cover Estimated Awards.* If the amount of funds available during a funding round is insufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, then the Fund will select Awardees and determine actual award amounts based on the process described in this section.

(c) *Priority of Awards.* The Fund will rank Applicants in each category of Qualified Activity according to the priorities described in this paragraph (c). Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds.

(1) First priority. If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities, ranked in the order set forth in the applicable NOFA.

(2) Second priority. If the amount of funds available during a funding round is sufficient for all Applicants that propose to engage in CDFI Related Activities but insufficient for all remaining estimated award amounts, second priority will be given to Applicants that propose to engage in Distressed Community Financing Activities, ranked in the order set forth in the applicable NOFA.

(3) Third Priority. If the amount of funds available during a funding round is sufficient for all Applicants that propose to engage in CDFI Related Activities and Distressed Community Financing Activities, but insufficient for all remaining estimated award amounts, third priority will be given to Applicants that propose to engage in Service Activities, ranked in the order set forth in the applicable NOFA.

(d) *Calculating actual award amounts.* The Fund will determine actual award amounts based upon the availability of funds, increases in Qualified Activities from the Baseline to the Assessment Period, and an Applicant's priority ranking. If an Applicant receives an

## Community Development Financial Institutions Fund

## § 1806.300

award for more than one priority category described in this section, the Fund will combine the award amounts into a single Bank Enterprise Award.

(e) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) To select Applicants not previously selected, using the calculation and selection process contained in this part;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(f) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason.

### § 1806.204 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability; Applications.* Applicants shall submit applications for Bank Enterprise Awards in accordance with this section and the applicable NOFA. After receipt of an application, the Fund may request clarifying or technical information related to materials submitted as part of such application or to verify that Qualified Activities were carried out in the manner prescribed in this part.

(b) *Application contents.* An application for a Bank Enterprise Award shall contain:

(1) A completed worksheet that reports the increases in Qualified Activities actually carried out during the Baseline and Assessment Period. If an Applicant has merged with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that reports the activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed;

(2) A report of Qualified Activities that were closed during the Assessment Period. Such report shall describe the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument;

(3) With respect to all CDFI Related Activities and Distressed Community Financing Activities where the amount of the Qualified Activity is \$250,000 or greater, documentation that meets the conditions described in § 1806.201(f);

(4) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(5) Certifications, as described in the applicable NOFA and Bank Enterprise Award application, that the information provided to the Fund is true and accurate and that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(6) In the case of an Applicant proposing to engage in Service Activities, or Distressed Community Financing Activities, an Applicant must submit a Distressed Community map and other documentation as described in the applicable NOFA and Bank Enterprise Award application;

(7) Information that indicates that each CDFI to which an Applicant has provided CDFI Support Activities is Integrally Involved in a Distressed Community as described in the applicable NOFA and Bank Enterprise Award application; and

(8) Any other information requested by the Fund, or specified by the Fund in the applicable NOFA or the Bank Enterprise Award application, in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

### Subpart C—Terms and Conditions of Assistance

#### § 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including record keeping

## § 1806.302

and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(4) Comply with performance goals that have been established by the Fund. Such performance goals will include measures that require an Awardee to use its BEA Program Award funds for Qualified Activities.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or non-compliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the award, bar the Awardee and/or its Affiliates from applying for an award from the Fund for a period to be decided by the Fund in its sole discretion, and pursue any other available legal remedies.

(c) *Compliance with Other CDFI Fund Awards.* In the event that an Awardee or its Subsidiary or Affiliate is not in compliance, as determined by the Fund, with the terms and conditions of any other award under the Bank Enterprise Award Program or any component of the Community Development Financial Institutions Program, the Fund may, in its sole discretion, reject an application for or withhold disbursement (either initial or subsequent) on a Bank Enterprise Award.

(d) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund will provide the Awardee with written notice of the proposed sanction and an opportunity to respond. Nothing in this section, however, will provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

## § 1806.302 Compliance with government requirements.

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

## § 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of

## 12 CFR Ch. XVIII (1–1–11 Edition)

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.

## § 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

## § 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

## PART 1807—CAPITAL MAGNET FUND

### Subpart A—General Provisions

Sec.

- 1807.100 Purpose.
- 1807.101 Summary.
- 1807.102 Relationship to other CDFI Fund programs.
- 1807.103 Awardee not instrumentality.
- 1807.104 Definitions.
- 1807.105 Waiver authority.
- 1807.106 OMB control number.

### Subpart B—Eligibility

- 1807.200 Applicant eligibility.

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

- 1807.300 Purposes of grants.
- 1807.301 Eligible activities.
- 1807.302 Restrictions on use of assistance.



## Community Development Financial Institutions Fund

## § 1807.104

### Subpart D—Qualification as Affordable Housing

- 1807.400 Affordable Housing—General.
- 1807.401 Affordable Housing—Rental Housing.
- 1807.402 Affordable Housing—Homeownership.

### Subpart E—Leveraging and Commitment Requirement.

- 1807.500 Leveraged costs—general.
- 1807.501 Commitment for use.
- 1807.502 Assistance limits.
- 1807.503 Projection completion.

### Subpart F—Tracking Requirements

- 1807.600 Tracking funds—general.
- 1807.601 Nature of funds.

### Subpart G—Applications for Assistance

- 1807.700 Notice of Funds Availability.

### Subpart H—Evaluation and Selection of Applications

- 1807.800 Evaluation and selection—general.
- 1807.801 Evaluation of Applications.

### Subpart I—Terms and Conditions of Assistance

- 1807.900 Assistance Agreement.
- 1807.901 Disbursement of funds.
- 1807.902 Data collection and reporting.
- 1807.903 Compliance with government requirements.
- 1807.904 Lobbying restrictions.
- 1807.905 Criminal provisions.
- 1807.906 CDFI Fund deemed not to control.
- 1807.907 Limitation on liability.
- 1807.908 Fraud, waste and abuse.

AUTHORITY: Housing and Economic Recovery Act of 2008, Pub. L. No.110-289, section 1131

SOURCE: 75 FR 75380, Dec. 3, 2010, unless otherwise noted.

### Subpart A—General Provisions

#### § 1807.100 Purpose.

The purpose of the Capital Magnet Fund (CMF) is to attract private capital for and increase investment in Affordable Housing Activities and related Economic Development Activities and Community Service Facilities.

#### § 1807.101 Summary.

(a) Through the CMF, the CDFI Fund will competitively award grants to

CDFIs and qualified Nonprofit Organizations to leverage dollars for:

(1) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing primarily for Low-Income Families; and

(2) Financing Economic Development Activities or Community Service Facilities.

(b) The CDFI Fund will select Awardees to receive financial assistance grants through a merit-based, competitive application process. Financial assistance grants that are awarded through the CMF may only be used for eligible uses set forth in subpart C of this part. Each Awardee will enter into an Assistance Agreement which will require it to leverage the CMF grant amount and abide by other terms and conditions pertinent to any assistance received under this part.

#### § 1807.102 Relationship to other CDFI Fund programs.

A Certified CDFI will automatically be deemed to meet the eligible entity requirements, provided that it has been in business as an operating entity for a period of at least three years prior to the application deadline.

##### *§ 1807.103 Awardee not instrumentality.*

No Awardee shall be deemed to be an agency, department, or instrumentality of the United States.

#### § 1807.104 Definitions.

For the purpose of this part:

(a) *Act* means the Housing and Economic Recovery Act of 2008, as amended, Public Law 110-289, section 1131;

(b) *Affiliate* means any entity that Controls, is Controlled by, or is under common Control with, an entity;

(c) *Affordable Housing* means rental or for-sale single-family or multi-family housing that meets the requirements set forth in subpart D of this part;

(d) *Affordable Housing Activities* means the Development, Preservation, Rehabilitation, or Purchase of Affordable Housing;

(e) *Affordable Housing Fund* means a loan, grant or investment fund, managed by the Awardee, whose capital is used to finance Affordable Housing Activities;

(f) *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 includes, with respect to Insured Credit Unions, the National Credit Union Administration;

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

(h) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

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

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

(k) *Capital Magnet Fund (or CMF)* means the program authorized by section 1131 of the Act, Public Law 110–289, and implemented under this part;

(l) *Certified Community Development Financial Institution (or Certified CDFI)* means an entity that has been determined by the CDFI Fund to meet the eligibility requirements set forth in 12 CFR 1805.201;

(m) *Committed* means that the Awardee is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment for use pursuant to §1807.501;

(n) *Community Development Financial Institutions Fund (or CDFI Fund)* means the Community Development Financial Institutions Fund, an office of the U.S. Department of Treasury, established under the Community Development Banking and Financial Institutions Act of 1994, as amended, 12 U.S.C. 4701 *et seq.*;

(o) *Community Service Facility* means the physical structure in which service programs for residents or service programs for the broader community (including, but not limited to, health care, childcare, educational programs including literacy and after school programs, job training, food and nutrition services, cultural, and/or social services) operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area;

(p) *Concerted Strategy* means a formal planning document that evidences the connection between Affordable Housing Activities and Economic Development Activities or Community Service Facilities. Such documents include, but are not limited to, a comprehensive, consolidated, or redevelopment plan, or some other local or regional planning document adopted or approved by the jurisdiction;

(q) *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;

(r) *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);

(s) *Development* means land acquisition, demolition of existing facilities, and construction of new facilities, which may include site improvement, utilities development and rehabilitation of utilities, necessary infrastructure, utility services, conversion, and other related activities;

(t) *Economic Development Activity* means the development, preservation, rehabilitation, or purchase of Community Service Facilities and/or other physical structures in which neighborhood-based businesses operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area;

(u) *Eligible-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 120 percent of the area median income; and

(2) In the case of rental housing units, income not in excess of 120 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(v) *Eligible Project Costs* means Leverage Costs plus those costs funded directly by a CMF award, exclusive of Operations;

(w) *Extremely Low-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 30 percent of the area median income; and

(2) In the case of rental housing units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(x) *Families* means households that 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 Virgin Islands, and the Northern Mariana Islands) and that meet the criteria set forth in § 1807.104(u), (w), (jj) or (fff);

(y) *HOME Program* means the HOME Investment Partnership Program set forth in the HOME Investment Partnerships Act under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*;

(z) *Homeownership* means ownership in fee simple title or a 99-year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or equivalent form of ownership (which shall include cooperative housing and mutual housing project). For purposes of housing located on trust or restricted Indian lands, homeownership includes leases of 50 years. The ownership interest may be subject only to the following:

(1) Restrictions on resale permitted under the Assistance Agreement;

(2) Mortgages, deeds of trust, or other liens or instruments securing debt on the property; or

(3) Any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest;

(aa) *Housing* means single- and multi-family residential units, including, but

not limited to, manufactured housing and manufactured housing lots, permanent housing for disabled and/or homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO), as described in 24 CFR 92.258;

(bb) *HUD* means the Department of Housing and Urban Development established under the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3532–3537;

(cc) *In Conjunction With* means physically proximate to Affordable Housing and reasonably available to residents of Affordable Housing. For a Metropolitan Area, In Conjunction With means located within the same census tract or within 2 miles of the Affordable Housing. For a Non-Metropolitan Area, In Conjunction With means located within the same county, township, or village, or within 20 miles of the Affordable Housing;

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

(ee) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund by the National Credit Union Administration pursuant to authority granted in 12 U.S.C. 1783 *et seq.*;

(ff) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation as determined in 12 U.S.C. 1813(c)(2);

(gg) *Leveraged Costs* means those costs as described in 12 CFR 1807.500;

(hh) *Loan Guarantee* means an agreement to indemnify the holder of a loan all or a portion of the unpaid principal balance in case of default by the borrower;

(ii) *Loan Loss Reserves* means funds that the Applicant or Awardee will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable, or for related purposes that the CDFI Fund deems appropriate;

(jj) *Low-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 80 percent of area median income; and

(2) In the case of rental housing units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by HUD;

(kk) *Low-Income Area (LIA)* means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located. With respect to a census tract or block numbering area located 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. In the case of a census tract or block numbering area located 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;

(ll) *Low Income Housing Tax Credit Program or LIHTC Program* means the program as set forth under Title I of the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*;

(mm) *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;

(nn) *Multi-family housing* means residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, apartment or townhouse;

(oo) *Non-Metropolitan Area* means an area set forth in the Assistance Agreement;

(pp) *Nonprofit Organization* means any corporation, trust, association, cooperative, or other organization that is:

(1) Designated as a nonprofit or not-for-profit entity under the laws of the organization's State of formation; and

(2) Exempt from Federal income taxation pursuant to the Internal Revenue Code of 1986;

(qq) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in 12 CFR 1805.200 which is not a Depository Institution

Holding Company, Insured Depository Institution, or Insured Credit Union;

(rr) *Operations* means all allowable expenses as defined by Office of Management and Budget (OMB) Circular A-122, "Cost Principles For Non-Profit Organizations," and OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," incurred by the Awardee in the administration, operation, and implementation of a CMF award;

(ss) *Participating Jurisdiction* means a jurisdiction designated by HUD, as a participating jurisdiction under the HOME Program in accordance with the requirements of 24 CFR 92.105;

(tt) *Preservation* means:

(1) Activities to refinance, with or without Rehabilitation, single-family or multi-family rental property mortgages that, at the time of refinancing, are subject to affordability and use restrictions under State or Federal affordable housing programs, including but not limited to, the HOME Program, the LIHTC Program, the Section 8 Tenant-Based Assistance and the Section 8 Rental Voucher programs (24 CFR part 982), or the Section 515 Rural Rental Housing program (7 CFR part 3560), hereinafter referred to as "similar State or Federal affordable housing programs," where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(2) Activities to refinance and acquire single-family or multi-family properties that, at the time of refinancing or acquisition, were subject to affordability and use restrictions under similar State or Federal affordable housing programs, by the former tenants of such properties, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(3) Activities to refinance the mortgages of single-family, owner-occupied housing that at the time of refinancing are subject to affordability and use restrictions under similar State or Federal affordable housing programs, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(4) Activities to acquire Single-family or Multi-family housing, with or without rehabilitation, with the commitment to subject the properties to the affordability qualifications set forth in subpart D of this part; or

(5) Activities to refinance, with or without Rehabilitation, single-family or multi-family rental property mortgages, with the commitment to subject the properties to the affordability qualifications set forth in subpart D of this part;

(uu) *Project Completion* means that all of the requirements set forth at §1807.503 for a project supported by a CMF award have been met;

(vv) *Purchase* means to provide direct financing to a homeowner to acquire Homeownership through an exchange of money;

(ww) *Rehabilitation* means any repairs and/or capital improvements that contribute to the long-term preservation, current building code compliance, habitability, sustainability, or energy efficiency of Affordable Housing.

(xx) *Revolving Loan Fund* means a pool of funds managed by the Applicant or Awardee wherein repayments on Affordable Housing Activities loans, Economic Development Activities loans and/or Community Services Facilities loans are used to finance additional loans;

(yy) *Risk-Sharing Loan* means loans for Affordable Housing Activities and/or Economic Development Activities in which the risk of borrower default is shared by the Applicant or Awardee with other lenders (*e.g.*, participation loans);

(zz) *Service Area* means the geographic area in which the Applicant proposes to use CMF funding, and the geographic area approved by the CDFI Fund in which the Awardee shall use CMF funding as set forth in its Assistance Agreement;

(aaa) *Single-family housing* means a one- to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot;

(bbb) *State* means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the Virgin Is-

lands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory of the United States;

(ccc) *State-Insured Credit Union* means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

(ddd) *Subsidiary* means any company which is owned or Controlled directly or indirectly by another company;

(eee) *Underserved Rural Area* means a Non-Metropolitan Area that:

(1) Qualifies as a Low-Income Area;

(2) Is experiencing housing stress evidenced by 30 percent or more of resident households with one or more of these four housing conditions in the last decennial census:

(i) Lacked complete plumbing;

(ii) Lacked complete kitchen;

(iii) Paid 30 percent or more of income for owner costs or rent, or

(iv) Had more than 1 person per room; or

(3) Is remote-rural county consisting of a Non-Metropolitan Area that is also not adjacent to a Metropolitan Area;

(fff) *Very Low-Income* means:

(1) In the case of owner-occupied housing units, income not greater than 50 percent of the area median income; and

(2) In the case of rental housing units, income not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

#### § 1807.105 Waiver authority.

The CDFI 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 CDFI 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 CDFI Fund will publish notification of granted waivers in the FEDERAL REGISTER.

## § 1807.106

### § 1807.106 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 1559-0036.

## Subpart B—Eligibility

### § 1807.200 Applicant eligibility.

(a) *General requirements.* An Applicant will be deemed eligible for a CMF award if it is:

(1) A Certified or certifiable CDFI. An entity may meet the requirements described in this paragraph (a)(1) if it is:

(i) A Certified CDFI, as set forth in 12 CFR 1805.201, that has been in existence as a legally formed entity as set forth in the Notice of Funds Availability (NOFA) for the applicable funding round; or

(ii) A certifiable CDFI that has been in existence as a legally formed entity as set forth in the NOFA for the applicable round and, although not yet certified as a CDFI, has submitted a complete CDFI certification application as of the date set forth in the applicable NOFA; or

(2) A Nonprofit Organization having as one of its principal purposes the development or management of affordable housing. An entity may meet the requirements described in this paragraph (a)(2) if it:

(i) Has been in existence as a legally formed entity as set forth in the applicable NOFA;

(ii) Demonstrates, through articles of incorporation, by-laws, or other board-approved documents, that the development or management of affordable housing are among its principal purposes; and

(iii) Can demonstrate that at least one-third of the Applicant's resources (either as a portion of total staffing or as a portion of total assets) are dedicated to the development or management of affordable housing.

(b) *Eligibility verification.* An Applicant shall demonstrate that it meets the eligibility requirements described in § 1807.200(a)(2) of this section by providing information described in the application, NOFA, and/or supplemental information, as may be requested by

## 12 CFR Ch. XVIII (1–1–11 Edition)

the CDFI Fund. For an Applicant seeking eligibility under § 1807.200(a)(1), the CDFI Fund will verify that the Applicant is a Certified CDFI during the application eligibility review. For an Applicant seeking eligibility under § 1807.200(a)(2), the CDFI Fund, in its sole discretion, shall determine whether the Applicant has satisfied said requirements.

## Subpart C—Use of Funds/Eligible Activities

### § 1807.300 Purposes of grants.

The CDFI Fund may provide financial assistance grants to organizations described under subpart B of this part for the purpose of attracting private capital for and increase investment in: (a) The Development, Preservation, Rehabilitation, or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income, and Low-Income families; and

(b) Economic Development Activities or Community Services Facilities. With respect to an Economic Development Activity or Community Service Facility funded with a CMF grant, the Affordable Housing that it is In Conjunction With may be financed by sources other than the CMF grant.

### § 1807.301 Eligible activities.

Grants awarded under this part shall be used by an Awardee to support Affordable Housing Activities, Economic Development Activities or Community Service Facilities, including the following eligible uses:

(a) To provide Loan Loss Reserves;

(b) To capitalize a Revolving Loan Fund;

(c) To capitalize an Affordable Housing Fund;

(d) To capitalize a fund to support Economic Development Activities or Community Service Facilities;

(e) For Risk-Sharing Loans;

(f) For Loan Guarantees; and

(g) For the Awardee's Operations.

### § 1807.302 Restrictions on use of assistance.

(a) An Awardee's activities under § 1807.301 shall not include the use of CMF for the following:

(1) Political activities;

- (2) Advocacy;
- (3) Lobbying, whether directly or through other parties;
- (4) Counseling services (including homebuyer or financial counseling);
- (5) Travel expenses;
- (6) Preparing or providing advice on tax returns;
- (7) Emergency shelters (including shelters for disaster victims);
- (8) Nursing homes;
- (9) Convalescent homes;
- (10) Residential treatment facilities;
- (11) Correctional facilities; or
- (12) Student dormitories.

(b) An Awardee may use up to a percentage of CMF award for Operations as specified in the applicable NOFA.

(c) An Awardee shall not use CMF award to support projects that:

(1) Consist of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(2) Consist of farming (within the meaning of I.R.C. section 2032A(e)(5)(A) or (B)) if, as of the close of the taxable year of the taxpayer conducting such trade or business, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such a trade or business, exceeds \$500,000.

(d) In any given funding round, no more than 30 percent of an Awardee's CMF award may be used for purposes described in § 1807.300(b).

#### Subpart D—Qualification as Affordable Housing

##### § 1807.400 Affordable housing—general.

Each Awardee that uses CMF funding to support Affordable Housing Activities shall ensure that 100 percent of Eligible Project Costs are attributable to housing units that meet the affordability qualifications set forth below for Eligible-Income Families. In addition, greater than 50 percent of the Eligible Project Costs must be attrib-

utable to housing units that meet the affordability qualifications set forth below for either Low-Income, Very Low-Income, or Extremely Low-Income Families.

##### § 1807.401 Affordable housing—rental housing.

To qualify as Affordable Housing, a rental Multi-family housing project financed with a CMF award must have at least 20 percent of the housing units occupied by Low-Income, Very Low-Income, or Extremely Low-Income Families and must comply with the rent limits set forth herein.

(a) *Rent limitation.* The maximum rent is a rent that does not exceed:

(1) For an Eligible-Income Family, 30 percent of the annual income of a family whose annual income equals 120 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(2) For a Low-Income Family, 30 percent of the annual income of a family whose annual income equals 80 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(3) For a Very Low-Income Family, 30 percent of the annual income of a family whose annual income equals 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD; or

(4) For an Extremely Low-Income Family, 30 percent of the annual income of a family whose annual income equals 30 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

(b) *Nondiscrimination against rental assistance subsidy holders.* The Awardee shall require that the owner of a rental unit cannot refuse to lease the unit to a Section 8 Program certificate or voucher holder (24 CFR part 982, Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or

comparable HOME tenant-based assistance document.

(c) *Initial rent schedule and utility allowances.* The Awardee shall ensure that the housing adheres to the applicable Participating Jurisdiction's maximum monthly allowances for utilities and services (excluding telephone). If the Participating Jurisdiction's allowances have not been determined or are otherwise unavailable, the Awardee shall rely upon the utility and services allowances established by the applicable city, county or State public housing authority.

(d) *Periods of Affordability.* Housing under § 1807.401 must meet the affordability requirements for not less than 10 years, beginning after Project Completion and at initial occupancy. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership and must be imposed by deed restrictions, covenants running with the land, or other recordable mechanisms, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. Other recordable mechanisms must be approved in writing and in advance by the CDFI Fund. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(e) *Subsequent rents during the affordability period.* Any increase in rent for a CMF-funded unit requires that tenants of those units be given at least 30 days prior written notice before the implementation of the rent increase.

(f) *Tenant income determination.*

(1) Each year during the period of affordability the tenant's income shall be re-examined; tenant income examination is the responsibility of the Awardee. Annual income shall include income from all household members.

(2) One of the following three definitions of "annual income" must be used to determine whether a family is income eligible:

(i) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(A) Wages, salaries, tips, commissions, *etc.*;

(B) Self-employment income from owned non-farm business, including proprietorships and partnerships;

(C) Farm self-employment income;

(D) Interest, dividends, net rental income, or income from estates or trusts;

(E) Social Security or railroad retirement;

(F) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(G) Retirement, survivor, or disability pensions;

(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; and

(I) Any other sources of income the CDFI Fund may deem appropriate;

(ii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes; or

(iii) "Annual Income" as defined at 24 CFR 5.609 (except that when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of net family assets).

(3) Although any of the above three definitions of "annual income" are permitted, in order to calculate adjusted income, exclusions from income set forth at 24 CFR 5.611 shall be applied.

(4) The CDFI Fund reserves the right to deem certain government programs, under which a Low-Income family is a recipient, as income eligible for purposes of meeting the tenant income requirements under this subsection.

(g) *Over-income tenants.* (1) CMF-funded units continue to qualify as Affordable Housing despite a temporary non-compliance caused by increases in the incomes of existing tenants if actions satisfactory to the CDFI Fund are being taken to ensure that all vacancies are filled in accordance with this



section until the noncompliance is corrected.

(2) Tenants whose incomes no longer qualify must pay rent no greater than the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's annual income, except that tenants of units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986, I.R.C. section 42, must pay rent governed by section 42. Tenants who no longer qualify as Eligible-Income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.

(3) If the income of a tenant of a CMF-funded unit no longer qualifies, the Awardee may designate another unit, in the CMF-funded project, as a replacement unit that meets the affordability qualifications for Eligible-Income, Low-Income, Very Low-Income, or Extremely Low-Income Families and as set forth in the Awardee's Assistance Agreement. If there is not an available replacement unit, the Awardee must fill the first available vacancy with a tenant that meets the affordability qualifications for Eligible-Income, Low-Income, Very Low-Income, or Extremely Low-Income Families as necessary to maintain compliance with the CMF requirements and the Assistance Agreement.

**§ 1807.402 Affordable housing—homeownership.**

(a) *Acquisition with or without rehabilitation.* Housing that is for Homeownership purchase must meet the affordability requirements of this subsection.

(1) The housing must be Single-family housing.

(2) The housing price does not exceed 95 percent of the median purchase price for the area as used in the HOME Program and as determined by the applicable Participating Jurisdiction.

(3) The housing must be purchased by a qualifying family as set forth in § 1807.400. The housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.

(4) *Periods of Affordability.* Housing under this subsection must meet the

affordability requirements for at least 10 years at the time of purchase by the homeowner.

(5) *Resale.* To ensure that CMF awards are being used for qualifying families for the entire 10-year affordability period, recoupment and redeployment or resale strategies must be imposed by the Awardee. A recoupment strategy must ensure that, in the event the qualifying homeowner sells the housing before the end of the 10-year affordability period and the new homeowner does not meet the affordability qualifications set forth in § 1807.400, the portion of the CMF award used to finance the Affordable Housing Activity is recouped and redeployed to a qualifying family for affordable housing homeownership in the manner set forth in § 1807.402, except that the housing must meet the affordability requirements only for the remaining affordability period. The Awardee may design and implement its own recoupment strategy. Deed restrictions, covenants running with the land, or other similar mechanisms may be used as the mechanism to impose the resale strategy. The Awardee shall report to the CDFI Fund the event of resale, recoupment and redeployment of the CMF award in the manner described in the Assistance Agreement. The affordability restrictions may terminate upon occurrence of any of the following termination events: Foreclosure, transfer in lieu of foreclosure or assignment of an FHA-insured mortgage to HUD. The Awardee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(b) *Rehabilitation not involving acquisition.* Housing that is currently owned by a qualifying family, as set forth in § 1807.400, qualifies as Affordable Housing if it meets the requirements of this subsection.

(1) The estimated value of the housing, after Rehabilitation, does not exceed 95 percent of the median purchase

## § 1807.500

price for the area, as used in the HOME Program and as determined by the applicable Participating Jurisdiction; or

(2) The housing is the principal residence of a qualifying family as set forth in §1807.400, at the time that CMF funding is Committed to the housing.

(3) Housing under this subsection must meet the affordability requirements for at least 10 years after Rehabilitation is completed or meet the resale provisions of §1807.402(a)(5).

(c) *Ownership interest.* The ownership in the housing assisted under this section must meet the definition of "Homeownership" as defined in §1807.104(z).

(d) *New construction without acquisition.* Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as Affordable Housing if it meets the requirements under paragraph (a) of this section.

(e) *Converting rental units to Homeownership units for existing tenants.* CMF-funded rental units may be converted to Homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of §1807.402. The Homeownership units are subject to a minimum period of affordability equal to the remaining affordability period.

### Subpart E—Leveraging and Commitment Requirement

#### § 1807.500 Leveraged costs—general.

(a) Each CMF grant is expected to result in Eligible Project Costs that total at least 10 times the grant amount. Such costs may be for activities that include Affordable Housing Activities, Economic Development Activities, or Community Service Facilities. Thus, an Awardee shall demonstrate that it leveraged, over its CMF funded portfolio, its CMF award at least 10 times the CMF grant amount or some other standard established by the CDFI Fund in the Awardee's Assistance Agreement. Leveraged Costs are costs that exceed the dollar amount of the Awardee's CMF contribution to each CMF-funded activity. However, the applica-

## 12 CFR Ch. XVIII (1–1–11 Edition)

ble NOFA may set forth a required percentage of Leveraged Costs that must be attributable to non-governmental sources. An Awardee may report to the CDFI Fund all Leveraged Costs, with the following limitations:

(1) No costs attributable to Operations may be reported as Leveraged Costs.

(2) No costs attributable to prohibited uses as identified in §1807.302(a) and (c) may be reported as Leveraged Costs.

(3) All costs attributable to Affordable Housing Activities reported as Leveraged Costs must be for housing units that qualify as Affordable Housing under §1807.401 or §1807.402 for Eligible-Income Families.

(b) Awardees shall self-report leveraging information through forms or electronic systems developed by the CDFI Fund, subject to audit requirements set forth herein. Consequently, Awardees shall maintain appropriate documentation, such as audited financial statements, wire transfers documents, pro-formas, and other relevant records, to support its reports.

#### § 1807.501 Commitment for use.

(a) CMF awards shall be Committed for use by the date designated in the Awardee's Assistance Agreement. An Awardee shall demonstrate that its CMF award is Committed by having executed a written, legally binding agreement under which CMF assistance will be provided to the developer or project sponsor for an identifiable project under which:

(1) Construction can reasonably be expected to start within 12 months of the agreement date; or

(2) Property title will be transferred within six months of the agreement date.

(b) An Awardee shall make an initial disbursement of its CMF award for Affordable Housing Activities, Economic Development Activities or Community Service Facilities by the date designated in its Assistance Agreement.

## Community Development Financial Institutions Fund

## § 1807.700

### § 1807.502 Assistance limits.

An eligible Applicant and its Subsidiaries and Affiliates may not be awarded more than 15 percent of the aggregate funds available for CMF grants during any funding year.

### § 1807.503 Project completion.

Once a CMF-funded project has been completed, it must be placed into service by the date designated in the Awardee's Assistance Agreement. Project Completion occurs, as determined by the CDFI Fund, when:

(a) All necessary title transfer requirements and construction work have been performed;

(b) The project complies with the requirements of this part, including the following property standards (these property standards must be complied with at the time of Project Completion and maintained for a period of at least 10 years thereafter):

(1) Housing that is constructed or rehabilitated with CMF funding must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, such housing must meet, as applicable: One of three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(2) The housing must meet the accessibility requirements at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

(3) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR part 3280. These standards pre-empt State and

local codes covering the same aspects of performance for such housing. The installation of all manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using CMF funds must meet the requirements set out in paragraph (b)(1) of this section; and

(c) The final drawdown has been disbursed for the project.

## Subpart F—Tracking Requirements

### § 1807.600 Tracking funds—general.

An Awardee receiving a CMF award shall develop and maintain a system to ensure that its CMF award is used in accordance with this part, the Act, its Assistance Agreement, and any requirements or conditions under which such amounts were awarded. Thus, an Awardee may create a separate account or accounting code for CMF activities.

### § 1807.601 Nature of funds.

A CMF award shall be considered Federal financial assistance in regards to applying Federal civil rights laws.

## Subpart G—Applications for Assistance

### § 1807.700 Notice of funds availability.

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

## Subpart H—Evaluation and Selection of Applications

### § 1807.800 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive assistance based on a review process that may include an interview(s) and/or site visit(s) intended to:

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

(b) Ensure that each Awardee can successfully meet its leveraging goals and achieve Affordable Housing Activity, Community Service Facility and/or Economic Development Activity impacts;

(c) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas and Underserved Rural Areas across the United States that meet criteria of economic distress, which may include:

(1) The percentage of Low-Income Families or the extent of poverty;

(2) The rate of unemployment or underemployment;

(3) The extent of blight and disinvestment;

(4) Economic Development Activities or Community Service Facilities that target Extremely Low-Income, Very Low-Income, and Low-Income families within the Awardee's Service Area; or

(5) Any other criteria the CDFI Fund shall set forth in the applicable NOFA; and

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

### § 1807.801 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive a CMF award if it fails to meet the eligibility requirements described in part 1807.200 and in the applicable NOFA, or if the Applicant has not submitted complete application materials. For the purposes of this paragraph (a), the CDFI Fund reserves the right to request additional information from the Applicant, if the CDFI Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive

assistance, the CDFI Fund will evaluate the Applicant's likelihood of success in meeting the factors set forth in the applicable NOFA, including but not limited to:

(1) The Applicant's ability to use CMF funding to generate additional investments;

(2) The need for affordable housing in the Applicant's market; and

(3) The ability of the Applicant to obligate amounts and undertake activities in a timely manner. In the case of an Applicant that has previously received assistance under any CDFI Fund program, the CDFI Fund will also consider the Applicant's level of success in meeting its performance goals, reporting requirements, and other requirements contained in the previously negotiated and executed assistance, allocation or award agreement(s) with the CDFI Fund, any undisbursed balance of assistance, and compliance with applicable Federal laws. The CDFI Fund may consider any other factors, as it deems appropriate, in reviewing an application, as set forth in the applicable NOFA.

(c) *Consultation with appropriate regulatory agencies.* In the case of an Applicant that is a federally-regulated financial institution, the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to making a final award decision and prior to entering into an Assistance Agreement.

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

## Subpart I—Terms and Conditions of Assistance

### § 1807.900 Assistance agreement.

(a) Each Applicant that is selected to receive a CMF award must enter into an Assistance Agreement with the CDFI Fund. The Assistance Agreement will set forth certain required terms and conditions of the Assistance Agreement which may include, but are not limited to, the following:

(1) The amount of the award;

(2) The approved uses of the award;

(3) The approved Service Area in which the award may be used;

(4) The time period by which the award proceeds must be Committed;

(5) The required documentation to evidence Project Completion; and

(6) Performance goals that have been established by the CDFI Fund based upon the Awardee's application.

(b) The Assistance Agreement shall provide that in the event of fraud, mismanagement, noncompliance with the Act or the CDFI Fund's regulations; or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee; the CDFI Fund, in its discretion, may:

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

(2) Revoke approval of the Awardee's Application;

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

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

(5) Bar the Awardee from reapplying for any assistance from the CDFI Fund; or

(6) Take such other actions as the CDFI Fund deems appropriate or as set forth in the Assistance Agreement.

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

#### § 1807.901 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or in some other manner, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any assistance under this part until an Awardee has satisfied all conditions set forth in the applicable NOFA and Assistance Agreement.

#### § 1807.902 Data collection and reporting.

(a) *Data—General.* An Awardee shall maintain such records as may be prescribed by the CDFI Fund that are necessary to:

(1) Disclose the manner in which CMF funding is used, including providing documentation to demonstrate Project Completion;

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

(3) Evaluate the impact of CMF funding.

(b) *Customer profiles.* An Awardee shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the CDFI Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of the Awardee's Service Area are adequately served and to evaluate the impact of CMF funding.

(c) *Access to records.* An Awardee 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 CDFI Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of CMF funding. 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 and audit or provide for an audit at least annually. The CDFI 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) *Data collection and reporting.*

(1) Financial Reporting: (i) All Non-Profit Awardees (excluding Insured

## § 1807.903

CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements that have been reviewed by an independent certified public accountant in accordance with *Statements on Standards for Accounting and Review Services*, issued by the American Institute of Certified Public Accountants by a time set forth in the applicable Notice of Funding Availability or Assistance Agreement (audited financial statements can be provided by the due date in lieu of reviewed statements, if available). Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) that are required to have their financial statements audited pursuant to OMB Circular A-133 *Audits of States, Local Governments and Non-Profit Organizations*, must also submit their A-133 audited financial statements by a time set forth in the applicable NOFA or Assistance Agreement. Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, must submit to the CDFI Fund a statement signed by the Awardee's authorized representative or certified public accountant, asserting that the Awardee is not required to have a single audit pursuant OMB Circular A-133.

(ii) For-profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public by a time set forth in the applicable NOFA or Assistance Agreement.

(iii) Insured CDFIs are not required to submit financial statements to the CDFI Fund. The CDFI Fund will obtain the necessary information from publicly available sources. State-Insured Credit Unions must submit to the CDFI Fund copies of the financial statements that they submit to the Appropriate State Agency.

(2) Performance Goal Reporting: Performance goals and measures that are specific to the Awardee's application for funding shall be met as set forth in its Assistance Agreement. Awardees

## 12 CFR Ch. XVIII (1-1-11 Edition)

shall submit data and information to the CDFI Fund regarding achievement of these Performance Goals as described in the Assistance Agreement.

(f) *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\\_circulars/](http://www.whitehouse.gov/omb/grants_circulars/)); and

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

### § 1807.903 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.

### § 1807.904 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.

### § 1807.905 Criminal provisions.

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

### § 1807.906 CDFI Fund deemed not to control.

The CDFI 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.

### § 1807.907 Limitation on liability.

The liability of the CDFI Fund and the United States Government arising out of any assistance to an Awardee in

## Community Development Financial Institutions Fund

## § 1815.102

accordance with this part shall be limited to the amount of the investment in the Awardee. The CDFI 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.

### § 1807.908 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.

## PART 1815—ENVIRONMENTAL QUALITY

### Sec.

- 1815.100 Policy.
- 1815.101 Purpose.
- 1815.102 Definitions.
- 1815.103 Designation of responsible Fund official.
- 1815.104 Specific responsibilities of the designated Fund official.
- 1815.105 Major decision points.
- 1815.106 Supplemental environmental review.
- 1815.107 Determination of review requirement.
- 1815.108 Actions that normally require an EIS.
- 1815.109 Preparation of an EIS.
- 1815.110 Categorical exclusion.
- 1815.111 Actions that require an environmental assessment.
- 1815.112 Preparation of an environmental assessment.
- 1815.113 Public involvement.
- 1815.114 Fund decisionmaking procedures.
- 1815.115 OMB control number.

AUTHORITY: 12 U.S.C. 4703, 4717; 42 U.S.C. 4332; Chapter X, Pub L. 104-19, 109 Stat. 237 (12 U.S.C. 4703 note).

SOURCE: 60 FR 54130, Oct. 19, 1995, unless otherwise noted.

### § 1815.100 Policy.

The Community Development Financial Institution Fund's policy is to ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Fund and to reduce any possible adverse effects of Fund decisions and ac-

tions upon the quality of the human environment.

### § 1815.101 Purpose.

This part supplements Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended, and describe how the Community Development Financial Institutions Fund intends to consider environmental factors and concerns in the Fund's decisionmaking process. This part applies only to the Fund and not to any other bureau, office or organization within the Department of the Treasury.

### § 1815.102 Definitions.

(a) For the purpose of this part:

(1) *Act* means the Community Development Banking and Financial Institutions Act (12 U.S.C. 4701 et seq.);

(2) *Application* means a request for assistance from the Fund submitted pursuant to parts 1805 or 1806 of this chapter;

(3) *CEQ regulations* means the regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 as promulgated by the Council on Environmental Quality, Executive Office of the President, appearing at 40 CFR parts 1500-1508 and to which this part is a supplement;

(4) *Comprehensive Business Plan* means a document submitted as part of an Application pursuant to part 1805 of this chapter which describes an organization's proposed process for offering products or services to a particular market, including organizational requirements needed to serve that market effectively;

(5) *Consumer Loans* means loans to one or more individuals for household, family or other personal expenditures;

(6) *Decisionmaker* means the Director of the Fund, unless an appropriate delegation of authority has been made;

(7) *EIS* means an environmental impact statement as defined in 40 CFR 1508.11 of the CEQ regulations;

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

## § 1815.103

(9) *NEPA* means the National Environmental Policy Act, as amended, 42 U.S.C. 4321-4335; and

(10) *Project* means all closely related actions relating to a specific site.

(b) Other terms used in this part are defined in 40 CFR part 1508 of the CEQ regulations.

### § 1815.103 Designation of responsible Fund official.

The Director of the Fund is the designated Fund official responsible for implementation and operation of the Fund's policies and procedures on environmental quality and control.

### § 1815.104 Specific responsibilities of the designated Fund official.

The designated Fund official shall:

(a) Coordinate the formulation and revision of Fund policies and procedures on matters pertaining to environmental quality and control;

(b) Establish and maintain working relationships with relevant government agencies (including Federal, state and local) concerned with environmental matters;

(c) Develop procedures within the Fund's planning and decisionmaking processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part;

(d) Develop, monitor, and review the Fund's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(e) Monitor processes to ensure that the Fund's procedures regarding consideration of environmental quality are achieving their intended purposes;

(f) Advise the officers and employees of the Fund of technical and management requirements of environmental analysis, of appropriate expertise available, and, with the assistance of the Department of the Treasury's Office of the General Counsel, of relevant legal developments;

(g) Monitor the consideration and documentation of the environmental aspects of Fund planning and decision-making processes by appropriate officers and employees of the Fund;

## 12 CFR Ch. XVIII (1-1-11 Edition)

(h) Ensure that all environmental assessments and, where required, all EISs are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Fund;

(i) Ensure that, as required, a legislative EIS is submitted with all proposed legislation;

(j) Consolidate and transmit to appropriate parties the Fund's comments on EISs and other environmental reports prepared by other agencies;

(k) Acquire information and prepare appropriate reports on environmental matters required of the Fund; and

(l) Coordinate the Fund's efforts to make available to other parties information and advice on the Fund's policies for protecting and enhancing the quality of the environment.

### § 1815.105 Major decision points.

(a) The possible environmental effects of an Application, including any Comprehensive Business Plan, must be considered along with technical, economic, and other factors throughout the decisionmaking process. For most Fund actions there are two distinct stages in the decisionmaking process:

(1) Preliminary approval stage, at which point applications are selected for funding; and

(2) Final approval and funding stage.

(b) Environmental review shall be integrated into the decisionmaking process of the Fund as follows:

(1) During the preliminary approval stage, the designated Fund official shall determine whether the Application proposes actions which are categorically excluded, or normally require an environmental assessment or an EIS;

(2) If the designated Fund official determines that the Application proposes actions which normally require an environmental assessment or an EIS, the applicant shall be informed that the final approval and funding, in addition to any other conditions, is contingent upon:

(i) The applicant supplying to the Fund all information necessary for the Fund to perform or have performed any environmental review required by this part;



(ii) The applicant not using any Fund financial assistance to perform any of such proposed actions in the Application that affect the physical environment until Fund approval is received; and

(iii) The outcome of the environmental review required by this part;

(3) The Fund will perform or have performed the environmental reviews required by this part;

(4) A preliminary approval of an Application may be withdrawn or further conditions may be imposed based upon the outcome of an environmental review required by this part; and

(5) If the designated Fund official determines that the Application proposes actions that require an environmental assessment or an EIS, the environmental assessment and/or EIS must be completed and circulated prior to the use of Federal funds for any activity that triggers the need for an environmental assessment and/or EIS.

**§ 1815.106 Supplemental environmental review.**

(a) The designated Fund official shall determine whether the proposed actions in the Application are sufficiently definite to perform a meaningful environmental review during the preliminary approval stage.

(b) If the designated Fund official determines that the Application is sufficiently definite to perform a meaningful environmental review during the preliminary approval stage, no conditions for supplemental environmental review shall be imposed.

(c) If the designated Fund official determines that the Application, or any part of the Application, is not sufficiently definite to complete a meaningful environmental review during the preliminary approval stage, the Fund shall require a supplemental environmental review prior to the taking of any action directly using Fund financial assistance that is not categorically excluded from environmental review or for which an environmental assessment or EIS has not been approved by the Fund. The applicant shall notify the designated Fund official when proposing any action requiring a supplemental environmental review and shall supply to the Fund all information nec-

essary for the Fund to perform the supplemental environmental review. The Fund shall perform or have performed such a supplemental environmental review. The applicant shall not use any Fund financial assistance to perform any of the proposed actions requiring a supplemental environmental review that affect the physical environment until Fund approval for such action is received.

**§ 1815.107 Determination of review requirement.**

In deciding whether to prepare an EIS, the designated Fund official shall determine whether the proposal is one that normally:

- (a) Requires an EIS;
- (b) Requires an environmental assessment, but not necessarily an EIS; or
- (c) Does not require either an EIS or an environmental assessment (categorical exclusion).

**§ 1815.108 Actions that normally require an EIS.**

(a) If necessary, the Fund shall perform or have performed an environmental assessment to determine if an Application, or any portion of an Application, requires an EIS. However, it may be readily apparent that a proposed action in an Application will have a significant impact on the environment; in such cases, an environmental assessment is not required and the Fund shall immediately begin to prepare, or have prepared, an EIS.

(b) An EIS normally is required where an Application proposes to directly use financial assistance from the Fund for any Project that would:

(1) Remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units, or would result in the construction or installation of 2,500 or more new housing units, or which would provide sites for 2,500 or more new housing units; or

(2) Remove, demolish, convert, or substantially rehabilitate 1,500,000 square feet or more of commercial space, or would result in the construction or installation of 1,500,000 square feet or more of new commercial space, or which would provide sites for 1,500,000 square feet or more of new commercial space.

**§ 1815.109 Preparation of an EIS.**

(a) If the Fund determines that an EIS should be prepared, it shall publish a notice of intent in the FEDERAL REGISTER in accordance with 40 CFR 1501.7 and 1508.22 of the CEQ regulations. After publishing the notice of intent, the Fund shall begin to prepare or have prepared the EIS. Procedures for preparing the EIS are set forth in 40 CFR part 1502 of the CEQ regulations.

(b) The Fund may supplement a draft or final EIS at any time. The Fund shall prepare or have prepared a supplement to either the draft or final EIS when:

(1) Substantial changes are proposed to an action contained in the draft or final EIS that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or

(2) Actions are proposed which relate or are similar to other action(s) taken or proposed and that together have a cumulatively significant impact on the environment.

**§ 1815.110 Categorical exclusion.**

The CEQ regulations provide for the categorical exclusion of actions that do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). Therefore, neither an environmental assessment nor an EIS is required for such actions. An action which falls into one of the categories below may still require the preparation of an EIS or environmental assessment if the designated Fund official determines it meets the criteria stated in § 1815.109 or involves extraordinary circumstances that may have a significant environmental effect. The Fund has determined the following categorical exclusions:

(a) Actions directly related to the administration or operation of the Fund (e.g. personnel actions, including, but not limited to, staff recruitment and training; purchase of goods and services for the Fund, including, but not limited to, furnishings, equipment, supplies and services; space acquisition; property management; and security);

(b) Actions directly related to and implementing proposals for which an environmental assessment or an environmental assessment and EIS have been prepared;

(c) Actions directly related to the granting or receipt of Bank Enterprise Act awards pursuant to part 1806 of this chapter;

(d) Actions directly related to training and/or technical assistance;

(e) Projects for the acquisition, disposition, rehabilitation and/or modernization of 500 existing housing units or less when all the following conditions are met:

(1) Unit density is not increased more than 20 percent;

(2) The Project does not involve changes in land use from nonresidential to residential;

(3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(4) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(f) Projects for the construction of 200 housing units or less when all the following conditions are met:

(1) The Project does not involve changes in existing land use from nonresidential to residential; and

(2) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(g) Projects for the acquisition, disposition, rehabilitation and/or modernization of 200,000 square feet or less of existing commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential;

(2) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(3) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

## Community Development Financial Institutions Fund

## § 1815.113

(h) Projects for the construction of 100,000 square feet or less of commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential; and

(2) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

(i) Projects for the acquisition of an existing structure, provided that the property to be acquired is in place and will be retained in the same use;

(j) Projects involving Fund financial assistance of \$1,000,000 or less;

(k) Actions directly related to the provision of residential tenant-based rental assistance, Consumer Loans, health care, child care, educational, cultural and/or social services;

(l) Actions involving Fund financial assistance that is used to increase the permanent capital and/or liquidity of an applicant;

(m) Actions where no use of Federal funds is involved in the activity or Project; and

(n) Actions directly related to the provision of working capital, the acquisition of machinery and equipment or the purchase of inventory, raw materials or supplies.

### § 1815.111 Actions that require an environmental assessment.

If a Project or action is not one that normally requires an EIS and does not qualify for categorical exclusion, the Fund shall prepare, or have prepared, an environmental assessment.

### § 1815.112 Preparation of an environmental assessment.

(a) The Fund shall begin the preparation of an environmental assessment as early as possible after the designated Fund official has determined that it is required. The Fund may prepare an environmental assessment at any time to assist planning and decisionmaking.

(b) An environmental assessment is a concise public document used to determine whether to prepare an EIS. An environmental assessment aids in complying with the NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary.

The environmental assessment shall contain brief discussions of the following topics:

(1) Purpose and need for the proposed action;

(2) Description of the proposed action;

(3) Alternatives considered, including the no action alternative;

(4) Environmental effects of the proposed action and alternative actions; and

(5) Listing of agencies, organizations or persons consulted.

(c) The most important or significant environmental consequences and effects on the areas listed below should be addressed in the environmental assessment. Only those areas which are specifically relevant to the particular proposal should be addressed. Those areas should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

(1) Natural/ecological features (such as floodplain, wetlands, coastal zones, wildlife refuges, and endangered species);

(2) Air quality;

(3) Sound levels;

(4) Water supply, wastewater treatment and water runoff;

(5) Energy requirements and conservation;

(6) Solid waste;

(7) Transportation;

(8) Community facilities and services;

(9) Social and economic;

(10) Historic and aesthetic; and

(11) Other relevant factors.

(d) If the Fund completes an environmental assessment and determines that an EIS is not required, then the Fund shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by the Fund as specified in 40 CFR 1506.6 of the CEQ regulations.

### § 1815.113 Public involvement.

All information collected by the Fund pursuant to this part shall be available to the public consistent with the CEQ regulations. Interested persons may obtain information concerning any pending EIS or any other

**§ 1815.114**

element of the environmental review process of the Fund by contacting the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., room 5116, Washington, DC 20220, or such other contact entity designated by the Fund.

**§ 1815.114 Fund decisionmaking procedures.**

To ensure that at major decisionmaking points all relevant environmental concerns are considered by the Decisionmaker, the following procedures are established:

(a) An environmental document, i.e., the EIS, environmental assessment, finding of no significant impact, or notice of intent, in addition to being prepared at the earliest point in the decisionmaking process, shall accompany the relevant proposal or action through the Fund's decisionmaking process to ensure adequate consideration of environmental factors;

**12 CFR Ch. XVIII (1–1–11 Edition)**

(b) The Decisionmaker shall consider in its decisionmaking process only those alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decisionmaker shall consider all comments received during any comment process and all alternatives described in the EIS. A written record of the consideration of alternatives during the decisionmaking process shall be maintained; and

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Fund.

**§ 1815.115 OMB control number.**

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153 (expires September 30, 1998).