

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 CDFI Fund will, to the maximum extent practicable, ensure that Recipients that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.801 Assistance Agreement; sanctions.

(a) Prior to providing any Financial or Technical Assistance, the CDFI Fund and a Recipient shall execute an Assistance Agreement that requires a Recipient 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 CDFI Fund and a Recipient 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 CDFI Fund.

(b) A Recipient shall comply with performance goals that have been established or negotiated with the CDFI Fund and which are based upon the Comprehensive Business Plan submitted as part of the Recipient's application. Such performance goals may include measures that require a Recipient 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 Recipient'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 CDFI Fund.

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

- (1) Require changes in the performance goals set forth in the Assistance Agreement;
- (2) Require changes in the Recipient's Comprehensive Business Plan;
- (3) Revoke approval of the Recipient's application;
- (4) Reduce or terminate the Recipient's assistance;
- (5) Require repayment of any assistance that has been distributed to the Recipient;
- (6) Bar the Recipient from reapplying for any assistance from the CDFI Fund; or
- (7) Take such other actions as the CDFI 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 CDFI Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The CDFI 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 CDFI Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, and to the satisfaction of the CDFI Fund, not later than 30 calendar days after receiving notice from the CDFI Fund:

(1) Objects to the proposed sanction;
 (2) Determines that the sanction would:

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

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

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

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

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

(f) In reviewing the performance of a Recipient in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the CDFI 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 CDFI Fund shall, to the maximum extent practicable, provide the Recipient (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 a Recipient or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.802 Payment 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 CDFI Fund. The CDFI Fund shall not provide any assistance under this part until a Recipient has satisfied any required conditions set forth in its Assistance Agreement and, if the Recipient is to receive financial assistance, the Recipient has secured in-hand and/or firm commitments for the matching funds required for such assistance pursuant to the applicable Notice of Funds Availability.

§ 1805.803 Data collection and reporting.

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

(1) Disclose the manner in which CDFI 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.* A Recipient (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 CDFI 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.* A Recipient (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 CDFI Fund or the Department of the 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 Department of the Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Recipient'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 CDFI Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from a Recipient.

(d) *Retention of records.* A Recipient shall comply with all record retention requirements as set forth in the Uniform Requirements (as applicable).

(e) *Data collection and reporting.* Each Recipient shall submit to the CDFI Fund information and documentation