

(c) The CDFI Fund will notify the Appropriate Federal Banking Agency before imposing any sanctions on a Recipient that is examined by or subject to the reporting requirements of that agency. The CDFI Fund will not impose a sanction described in §1806.500(b) if the Appropriate Federal Banking Agency, in writing, 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 Recipient; or

(ii) Impede or interfere with an enforcement action against that Recipient by the Appropriate Federal Banking Agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

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

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

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

§ 1806.504 Retention of records.

A Recipient must comply with all record retention requirements as set forth in the Uniform Administrative Requirements.

PART 1807—CAPITAL MAGNET FUND

Subpart A—General Provisions

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AUTHORITY: 12 U.S.C. 4569.

SOURCE: 89 FR 53015, June 25, 2024, 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 in every State of the United States, the District of Columbia, or territories of the United States.

§ 1807.101 Summary.

(a) Through the CMF, the CDFI Fund competitively awards grants to Certified 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) The financing of Economic Development Activities.

(b) The CDFI Fund selects Recipients to receive CMF Awards through a competitive Application process. CMF Awards may only be used for Eligible Uses set forth in subpart C of this part. Each Recipient will enter into an Assistance Agreement that will require it to leverage the CMF Award amount and abide by other terms and conditions pertinent to any assistance received under this part.

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§ 1807.102 Relationship to other CDFI Fund programs.

Restrictions on applying for, receiving, and using the CMF Awards in conjunction with awards under other programs administered by the CDFI Fund are set forth in the applicable funding notice.

§ 1807.103 Recipient not instrumentality.

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

§ 1807.104 Definitions.

For the purpose of this part:

Act means the Housing and Economic Recovery Act of 2008, as amended, Public Law 110–289, section 1131;

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

Affordability Period means a period of at least 10 years or other longer time period in the applicable NOFA issued by the CDFI Fund, during which time the Recipient must ensure the affordability requirements set forth herein and/or the Assistance Agreement are met for each Project;

Affordable Housing means housing that meets the requirements set forth in subpart D of this part;

Affordable Housing Activities means the Development, Preservation, Rehabilitation, and/or Purchase of Affordable Housing or Secondary Market Mortgage Purchase;

Affordable Housing Fund means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

(1) Manages and makes investment decisions for; and

(2) Uses to finance Affordable Housing Activities in any combination of debt, grant, or equity investments, which does not include the purchase of stock, securities, or the buy-out of partnership interests;

Applicant means any entity submitting an Application for a CMF Award;

Application means the CDFI Fund's CMF application form, including any written or verbal information in connection therewith and any exhibits, attachments, appendices and/or written

or verbal supplements thereto, submitted by an Applicant to the CDFI Fund, in response to the applicable Notice of Funds Availability (NOFA);

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;

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;

Assistance Agreement means a formal, written agreement between the CDFI Fund and a Recipient that specifies the terms and conditions of assistance under this part;

Capital Magnet Fund (or CMF) means the program authorized by the Act and implemented under this part;

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

CMF Award means the financial assistance in the form of a grant made by the CDFI Fund to a Recipient pursuant to this part;

CMF Unit means

(1) A single residential unit of Housing financed or supported with a CMF Award, rented or owned by a Family, with dedicated kitchen and bath facilities that meets the requirements of subparts D and E, as applicable; or

(2) A single-room occupancy (SRO) unit, a group home, or an assisted living facility with shared common kitchen and bath facilities accompanied by an individual lease for each tenant that meets the requirements of subparts D and E of this part;

Committed for Use means as set forth in §1807.501, that the Recipient is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment for Eligible Use of the CMF Award;

Community Development Financial Institutions Fund (or CDFI Fund) means the Community Development Financial Institutions Fund, the U.S. Department of the Treasury, established pursuant to the Community Develop-

ment Banking and Financial Institutions Act of 1994, as amended, 12 U.S.C. 4701 *et seq.*;

Community Service Facility means the physical structure in which service programs directly benefit nearby residents of any affordable housing. These service programs serve residents of affordable housing and include, but are not limited to, health care, childcare, educational programs including literacy and after school programs, job training, food and nutrition services, arts, and/or social services, as further set forth in the Assistance Agreement;

Concerted Strategy means a formal planning document that evidences the connection between Affordable Housing Activities and Economic Development Activities. 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;

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;

Depository Institution Holding Company means a bank holding company or a savings and loan holding company as each are defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(w);

Development means any combination of the following activities: 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 resulting in Affordable Housing;

Direct Administrative Expenses as described in 2 CFR 200.413 of the Uniform Administrative Requirements, means

direct costs incurred by the Recipient, related to the financing and/or in support of Projects;

Economic Development Activity means the development, preservation, acquisition and/or rehabilitation of Community Service Facilities and/or other physical structures in which businesses operate in order to implement a Concerted Strategy to stabilize, sustain, or revitalize communities and neighborhoods physically proximate to any affordable housing benefiting a Low-Income Area or Underserved Rural Area, subject to subpart D of this part;

Economic Development Activity Fund means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

(1) Manages and makes investment decisions for; and

(2) Uses to finance Economic Development Activities in any combination of debt, grant, or equity, which does not include the purchase of stock, securities, or the buy-out of partnership interests;

Effective Date means the date that the Assistance Agreement is effective; such date is determined by the CDFI Fund after the Recipient has returned an executed Assistance Agreement, along with all required supporting documentation, including an opinion from its legal counsel, if required;

Eligible-Income means having, in the case of owner-occupied or rental Housing units, annual income at 120 percent or below of the area median income, adjusted for Family size, in the same manner as HUD makes these adjustments for its other published income limits;

Eligible Project Costs means all eligible development, financing, refinancing, acquisition, relocation, loan loss reserve, guarantee, predevelopment, and related soft costs incurred in the achievement of Project Completion, as described in the Assistance Agreement, paid using a CMF Award and any Leveraged Capital;

Eligible Uses means allowable uses of the CMF Award set forth in § 1807.301;

Extremely Low-Income means, in the case of owner-occupied or rental Housing units, having income at 30 percent or below of the area median income, adjusted for Family size, as determined

by HUD, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low incomes;

Family means a household of one or more persons living in the same dwelling unit. All persons in a household who are related by birth, marriage or adoption are regarded as members of the Family. A Family may also include individuals living in a household who are not related to each other;

Feasibility Determination Expenses mean direct costs, as defined by the Uniform Administrative Requirements, and incurred by the Recipient to determine the feasibility of potential Affordable Housing Activities and/or Economic Development Activities to implement the CMF Award. These costs must be incurred before Project Commitment. Costs designated as Feasibility Determination Expenses cannot be deemed as Eligible Project Costs. Such expenses may include, but are not limited to, preliminary market studies, engineering, architectural analyses, financial feasibility analyses, and other costs as further detailed in the Assistance Agreement and guidance provided by the CDFI Fund;

Homebuyer means a Family that does not currently own any Single-family housing or is in the process of selling and replacing their primary residence. A Homebuyer may not own any other Single-family housing or Multi-family housing. Notwithstanding this definition, a Homebuyer includes a Family that owns a manufactured housing unit and is in the process of replacing or refinancing it, or owns a manufactured housing unit as part of the conversion of a manufactured housing park to a tenant-owned park or cooperative;

HOME Program means the HOME Investment Partnership Program established by 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.*;

Homeownership means ownership interest in a home in fee simple, or by condominium, cooperative, mutual

housing, or ground lease title interest, as allowed under State law, in one- to four-unit Single-family housing, or ownership of a manufactured housing unit. The ownership interest is subject to the following additional requirements:

(1) Ownership interest may not merely consist of a right of possession under a contract for deed, installment contract, or land contract pursuant to which the deed is not given until the final payment is made; and

(2) Ownership interest is subject to the restrictions on affordability permitted under the Assistance Agreement and this part; mortgages, deeds of trust, or other liens or instruments securing debt on the property; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest;

Homeownership Program means an affordable housing program established by a Recipient for the purpose of providing direct financing or grants to Homebuyers to purchase Single-family housing. The Project Commitment requirements of §1807.501 are satisfied if the board of directors of the Recipient makes a Project Commitment of the CMF Award to the Homeownership Program by resolution in a form and substance acceptable to the CDFI Fund;

Housing means Single-family and Multi-family residential units including, but not limited to, manufactured housing, permanent supportive housing, single-room occupancy (SRO) housing, assisted living, and group homes that are permanent in nature and not temporary, short term, transitional, or a dormitory, as further set forth by the CDFI Fund;

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 *et seq.*;

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.*). Each such Indian Tribe

must be recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

Insured CDFI means a Certified CDFI that is an Insured Depository Institution or an Insured Credit Union;

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.*;

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

Investment Period means the period beginning with the Effective Date and ending on the fifth year anniversary of the Effective Date, or such other period as may be established by the CDFI Fund in the Assistance Agreement;

Leveraged Capital means capital raised to finance the costs for Affordable Housing Activities and Economic Development Activities that exceeds the dollar amount of the CMF Award, as further described in §1807.500;

Loan Guarantee means the Recipient's use of the CMF Award to support an agreement to indemnify the holder of a loan for all or a portion of the unpaid principal balance in case of default by the borrower. The proceeds of the loan that is guaranteed with the CMF Award must be used for Affordable Housing Activities and/or Economic Development Activities;

Loan Loss Reserves means proceeds from the CMF Award that the Recipient will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable for Affordable Housing Activities and/or Economic Development Activities, or for related purposes that the CDFI Fund deems appropriate;

Low-Income means, in the case of owner-occupied or rental Housing units, having income at 80 percent or below of the area median income, adjusted for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower

than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes;

Low-Income Area (or LIA) means a census tract in which the median family income does not exceed 80 percent of the area median family income. With respect to a census tract 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 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;

Low Income Housing Tax Credits (or LIHTCs) means credits against income tax under section 42 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. 42;

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, and as made available by the CDFI Fund for a specific Application funding round;

Multi-family housing means residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, or an apartment;

Non-Metropolitan Area means counties that are designated as Non-Metropolitan Counties by the Office of Management and Budget (OMB) 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, and as made available by the CDFI Fund for a specific Application funding round;

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 or Indian Tribe of formation;

(2) Exempt from Federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, with the exception of organizations affiliated with Indian Tribes; and

(3) Able to demonstrate, as set forth in the NOFA, that a share of its total assets is dedicated to the development or management of affordable housing;

Payment means the transmission of CMF Award dollars from the CDFI Fund to the Recipient;

Permanent Housing means Housing that is owned or is rented under a written lease with an initial lease term of six months or more;

Preservation means the acquisition, refinancing, recapitalization, of existing Multi-family rental housing or Single-family housing, with or without Rehabilitation, to create, maintain, or extend the affordability requirement as provided in subpart D of this part. Preservation may include the refinancing of owner-occupied Single-family housing or Multi-family rental housing to extend the existing affordability restrictions set to expire during the Investment Period, or other timeline as defined by the CDFI Fund, by at least an additional 10-year Affordability Period or as set forth in the Assistance Agreement. Preservation may also include the imposition of a new Affordability Period on Housing not currently subject to affordability restrictions;

Presumptively Compliant or Presumptive Compliance means certain rules, requirements and designations under other Federal housing programs that the CDFI Fund deems to meet certain CMF requirements;

Program Income means gross income as described in 2 CFR part 200 and as further specified in the Recipient's Assistance Agreement;

Project means a specific Affordable Housing Activity, Economic Development Activity, or Homeownership Program the Recipient uses its CMF Award to finance or support, resulting in Project Completion;

Project Commitment means that the Recipient is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment to a Project as set forth in § 1807.501;

Project Completion means that all of the requirements set forth at §1807.503 for a Project have been met;

Purchase means to use a CMF Award to provide financing to:

(1) A Family for Homeownership that meet the qualifications set forth in subparts D and E; or

(2) A developer or project sponsor for the acquisition of rental Housing that must meet the qualifications set forth in subparts D and E of this part;

Recipient means an Applicant selected by the CDFI Fund to receive a CMF Award pursuant to this part;

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;

Revolving Loan Fund means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

(1) Manages and approves lending decisions for; and

(2) Uses to finance Affordable Housing Activities and/or Economic Development Activities wherein the repayments on such loans are used to finance additional loans;

Risk-Sharing Loan means loans consisting of the CMF Award and any Leveraged Capital made for Affordable Housing Activities and/or Economic Development Activities in which the risk of borrower default is shared by the Recipient with other lenders (e.g., participation loans);

Rural Area means a census tract that meets the definition of Rural Area per 12 CFR 1282.1 (Enterprise Duty To Serve Final Rule) that is: A census tract outside of a Metropolitan Statistical Area as designated by the Office of Management and Budget; or A census tract in a Metropolitan Statistical Area as designated by the Office of Management and Budget that is outside of the Metropolitan Statistical Area's Urbanized Areas, as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2;

Secondary Market Mortgage means a mortgage:

(1) Originated by a qualified third party lender as defined in guidance by the CDFI Fund and purchased by the Recipient in 12 months or less from the date of its origination using a CMF Award and evidenced by an agreement that meets subparts C, D and E of this part;

(2) For which the source of the origination is not the CMF Award; and

(3) That would not have been originated but for the Recipient's Secondary Market Mortgage Purchase;

Secondary Market Mortgage Purchase means the purchase of a Secondary Market Mortgage;

Service Area means the geographic area in which the Applicant proposes to use the CMF Award, and the geographic area approved by the CDFI Fund in which the Recipient must use the CMF Award as set forth in its Assistance Agreement. Service Area may include a national Service Area for Rural Areas and additional areas that may be defined by the CDFI Fund in the applicable NOFA;

Single-family housing means a one- to four- unit Family residence, a condominium unit, a cooperative unit, mutual housing, a manufactured housing unit only, or the combination of a manufactured housing unit and lot;

State means the states of the United States, the District of Columbia, or any territory of the United States;

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;

Subsidiary means any company that is majority owned, or Controlled directly, or indirectly, by another company. For purposes of ownership, a Subsidiary's parent company possesses more than 50 percent ownership of the Subsidiary;

Underserved Rural Area means all Rural Areas as defined as a census tract that meets the definition of Rural Area per 12 CFR 1282.1 (Enterprise Duty To Serve Final Rule) that is: A census tract outside of a Metropolitan Statistical Area as designated by the Office of Management and Budget; or A census tract in a Metropolitan

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Statistical Area as designated by the Office of Management and Budget that is outside of the Metropolitan Statistical Area's Urbanized Areas, as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2;

Uniform Administrative Requirements means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200);

Very Low-Income means, in the case of owner-occupied or rental Housing, having income at 60 percent or below of the area median income, with adjustments for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes;

§ 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 not adversely affect achieving 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 Presumptive Compliance with Other Federal Programs.

The CDFI Fund may deem certain other Federal program requirements, designations and/or reporting criteria as being Presumptively Compliant with any of the CMF program requirements set forth herein. Recipients participating in and meeting the program requirements of such designated Federal programs may be deemed compliant with certain CMF program requirements, as provided for in the Assist-

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ance Agreement or other CDFI Fund guidance and materials.

§ 1807.107 Applicability of regulations for CMF Awards.

(a) The regulations of this part are applicable for all uncommitted funds from prior CMF Awards issued as of June 25, 2024, as well as all CMF Awards made pursuant to all Notices of Funds Availability published after June 25, 2024.

(b) The definition of “Nonprofit Organization” is applicable to any Notice of Funds Availability published on or after January 1, 2026; until that time, the definition of “Nonprofit Organization” in §1807.104 of the 2016 interim rule remains in effect.

Subpart B—Eligibility

§ 1807.200 Applicant eligibility.

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

(1) A Certified 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;

(ii) A Certified CDFI that has been in existence as a legally formed entity as set forth in the applicable Notice of Funds Availability (NOFA); or

(2) A Nonprofit Organization having as one of its principal purposes, the development or management of affordable housing. A Nonprofit Organization 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) Demonstrates, by providing information described in the Application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund, that a certain percentage, set forth in the applicable NOFA, of the Applicant's 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 paragraph (a)(2) of this section by providing information described in the Application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund. For an Applicant seeking eligibility under paragraph (a)(1) of this section, the CDFI Fund will verify that the Applicant is a Certified CDFI as described in the applicable NOFA.

§§ 1807.201–1807.299 [Reserved]

**Subpart C—Eligible Purposes;
Eligible Uses; Restrictions**

§ 1807.300 Eligible purposes.

Each Recipient must use its CMF Award for the Eligible Uses described in §1807.301 so long as such Eligible Uses increase private capital for and increase investment in:

(a) Development, Preservation, Rehabilitation, and/or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income, and Low-Income Families; and

(b) Economic Development Activities, as further described in §1807.403, which stabilize, sustain, or revitalize communities and neighborhoods and must be: located in a Low-Income Area or Underserved Rural Area; undertaken in conjunction with any affordable housing that is authorized as such under applicable local, State or Federal housing program laws, and reasonably available to, physically proximate to, and beneficial to residents of affordable housing.

§ 1807.301 Eligible Uses.

The Recipient must use its CMF Award to finance and support Affordable Housing Activities and/or Economic Development Activities through the following Eligible Uses:

- (a) To capitalize Loan Loss Reserves;
- (b) To capitalize a Revolving Loan Fund;
- (c) To capitalize an Affordable Housing Fund;
- (d) To capitalize an Economic Development Activity Fund;
- (e) To make Risk-Sharing Loans; and
- (f) To provide Loan Guarantees.

§ 1807.302 Restrictions on use of a CMF Award.

(a) The Recipient may not use its CMF Award 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) Dormitories.

(b) The Recipient shall not use the CMF Award to finance or support Projects that include:

(1) The operation of any private or commercial golf course, country club, massage parlor, hot tub facility, sun-tan 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, or any of the businesses of activities set forth in 13 CFR 120.110(c) through (p), or any other businesses deemed inconsistent with the general purpose the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 *et seq.*); or

(2) Farming activities (within the meaning of the Internal Revenue Code (IRC) 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 trade or business, exceeds \$500,000.

(c) For each individual CMF Award, the Recipient may not use more than 30 percent of its CMF Award for Economic Development Activities, if such use is approved in its applicable Assistance Agreement.

(d) Any Recipient that uses its CMF Award for a Loan Guarantee or Loan Loss Reserves must ensure that loan(s)

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made pursuant to a Loan Guarantee or Loan Loss Reserves finance Affordable Housing Activities and/or Economic Development Activities. The Affordable Housing resulting from the Recipient's Loan Guarantee or Loan Loss Reserve shall be tracked during the Affordability Period for compliance with the affordability requirements as set forth in subpart D of this part.

(e) If loans that are made pursuant to a Loan Guarantee or Loan Loss Reserves are repaid during the Investment Period, the Recipient must use the funds made available by the loan repayment as Program Income as set forth in the Recipient's Assistance Agreement.

(f) The Recipient may use its CMF Award for Direct Administrative Expenses or Feasibility Determination Expenses at amounts set forth in the applicable NOFA and corresponding Assistance Agreement. Neither Direct Administrative Expenses nor Feasibility Determination Expenses can be attributable to Eligible Project Costs for a Project.

§ 1807.303 Authorized uses of Program Income.

(a) Program Income earned in the form of principal and equity repayments must be used by the Recipient in the manner further set forth in the Assistance Agreement.

(b) Program Income earned in the form of interest payments, and all other forms of Program Income (except for that which is earned as described in paragraph (a) of this section), must be used by the Recipient as set forth in the Assistance Agreement and in accordance with 2 CFR part 200.

Subpart D—Qualification as Affordable Housing

§ 1807.400 Affordable Housing—General.

(a) For any amount of the CMF Award used for Affordable Housing Activities, 100 percent of such Eligible Project Costs must be attributable to Affordable Housing, meaning that the Affordable Housing complies with the affordability qualifications set forth in this subpart for Eligible-Income Families. Further, as a subset of said 100

percent, greater than 50 percent of the Eligible Project Costs must be attributable to Affordable Housing that comply with the affordability qualifications set forth in this subpart for Low-Income, Very Low-Income, or Extremely Low-Income Families, or as further set forth in the applicable NOFA and/or Assistance Agreement.

(b) Affordable Housing must be Permanent Housing.

(c) All the occupants of the Affordable Housing must not be full-time students unless they are:

(1) Married students who file a joint tax return;

(2) Students who receive assistance under Title IV of the Social Security Act;

(3) Students enrolled in a job training program;

(4) Students who are single parents with children who are their dependents, as defined in IRC sec. 152;

(5) Students who previously were part of a foster care program; or

(6) Meet other criteria specified by the CDFI Fund.

§ 1807.401 Affordable Housing—Rental Housing.

To qualify as Affordable Housing, each rental Multi-family housing Project financed with a CMF Award must have at least 20 percent of the units rent-restricted to any combination of Low-Income, Very Low-Income, or Extremely Low-Income Families and must comply with the rent limits as set forth in the applicable NOFA and Assistance Agreement in any CMF funding round. The CDFI Fund may require a greater percentage of the units per Project to be income-targeted and/or require a specific targeted income commitment in any given CMF round, as set forth in the applicable NOFA and Assistance Agreement.

(a) *Rent limitations.* The gross rent limits for Affordable Housing are further specified in the Assistance Agreement.

(b) *Nondiscrimination against rental assistance subsidy holders.* The Recipient 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 Recipient shall ensure that utility allowances and submetering rules are consistent with regulations concerning utility allowances and submetering in buildings that are subject to gross rent restrictions as set forth in the Assistance Agreement and under IRC sec. 42(g)(2), as applicable.

(d) *Periods of affordability.* Housing under this section must meet the affordability requirements during the Affordability Period. 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 recording instruments. Upon receipt of a written approval from the CDFI Fund, a Recipient may use a different recording instrument as provided for in the Assistance Agreement. The affordability restrictions are allowed to terminate upon foreclosure or transfer in lieu of foreclosure. To the extent allowed under State law, in the event of a sale of property at foreclosure, transfer in lieu of foreclosure, short sale or other types of disposition, proceeds available to pay off a mortgage financed with a CMF Award shall be treated as Program Income.

(e) *Standard lease terms and conditions.* All tenants occupying rental CMF Units shall be required to enter into a written lease or rental agreement setting forth the terms and requirements which are, but not limited to, compliance with applicable State and local law.

(f) *Tenant income determination.* (1) At the time of each initial lease and occupancy, the tenant income shall be determined to ascertain income eligibility. During the Affordability Period,

the existing tenant income shall be re-examined in a manner as set forth in the Assistance Agreement. Tenant income examination and verification are ultimately the responsibility of the Recipient. Tenant income shall include income from all Family members. The Recipient must require the Project owner to obtain information on rents and occupancy of Affordable Housing financed or supported with a CMF Award in order to demonstrate compliance with this section.

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

(i) 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

(ii) 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," as defined in 24 CFR 5.603).

(3) The CDFI Fund reserves the right to deem certain government programs, under which a Family is a recipient, as income eligible for purposes of meeting the tenant income requirements under this section.

(g) *Over-income tenants.* (1) CMF Units continue to qualify as Affordable Housing despite a temporary noncompliance 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) The maximum rent for tenants whose incomes no longer qualify is either 30 percent of the Family's annual income, or the amount payable by the tenants under State or local law, whichever is less; however, tenants whose income exceeds the Eligible-Income level are not required to pay rent in excess of the market rent for comparable, unassisted units in the neighborhood.

(3) If the income of a tenant of a CMF Unit no longer qualifies, the Recipient may designate another unit within the

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Project as a rent-restricted replacement unit that meets the affordability qualifications for the same income category as the original unit, as further set forth in the Recipient's Assistance Agreement. If there is not an available replacement unit, the Recipient must fill the first available vacancy with a tenant that meets the affordability qualifications for the same income category of the original unit as necessary to maintain compliance with the CMF requirements and the Assistance Agreement.

§ 1807.402 Affordable Housing—Homeownership.

(a) *Purchase with or without Rehabilitation.* (1) A Recipient that uses the CMF Award to finance or support the Purchase of Housing by a qualified Homebuyer must ensure that the Housing and Homebuyer meet the affordability requirements of this subpart as follows:

(i) *Single-family housing.* The Housing must be a Single-family housing.

(ii) *Purchase price limits.* The Single-family housing does not exceed the purchase price limits for the area under the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index designated by the CDFI Fund as set forth in the applicable Assistance Agreement; the related mortgage must be originated based upon an assessment of whether the Homebuyer can repay the loan based on terms and conditions that are transparent and understandable to the Homebuyer, and the mortgage is affordable to the Homebuyer over the life of the loan.

(iii) *Qualifying Homebuyer.* The Single-family housing must be purchased by a qualifying Homebuyer.

(iv) *Eligible-Income requirements.* A qualifying Homebuyer must have a household income at no greater than Eligible-Income. To determine whether a Homebuyer qualifies as Eligible Income (or at any other income level specified in the Assistance Agreement) under this section, the Recipient must use the Homebuyer's adjusted gross income as defined under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax reporting purposes, or other methodology for determining income eligi-

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bility as provided in the Assistance Agreement. Homebuyers of one- to four- unit Single-family housing may rent the additional unit(s) as Permanent Housing if at least one unit is maintained as the principal residence of the Homebuyer.

(v) *Periods of affordability.* Single-family housing under this section must become the principal residence of the Homebuyer at the time of Purchase and is subject to the affordability requirements during the Affordability Period and as further set forth in § 1807.402(a)(1)(vi). The Affordability Period does not apply to additional units rented as Permanent Housing, as described in § 1807.402(a)(1)(iv).

(vi) *Resale.* To ensure that the CMF Awards are being used for qualifying Families during the Affordability Period, recoupment, replacement, and/or resale strategies must be established and imposed by the Recipient. A recoupment, replacement, and/or resale strategy must ensure that:

(A) In the event the qualifying Family sells the Housing in five years or less from the date of Purchase, the Housing must be sold to an Eligible-Income Family meeting the qualifications set forth in § 1807.402. Otherwise, the CMF Award investment must be recouped by the Recipient and the Housing replaced with a replacement unit to satisfy the affordability requirement for the remainder of the Affordability Period. If the Housing is replaced, the replacement unit must be sold to an Eligible-Income Family and must also meet the qualifications set forth in § 1807.402.

(B) In the event the qualifying Family sells the Housing any time after five years from the date of Purchase but before the end of the Affordability Period, the Housing must either be sold to a new Eligible-Income Family or, if the Housing is not sold to an Eligible-Income Family, the CMF investment must be recouped as Program Income in a proportional amount from net sale proceeds, as further set forth in the Assistance Agreement. If the Housing is not sold to an Eligible-Income Family after the five-year anniversary of the Purchase date and the Recipient recoups a proportional amount of the CMF Awards as Program Income, the

Recipient is not required to replace the sold Housing with a replacement unit.

(2) The Recipient may design and implement its own recoupment, replacement, and/or resale strategy, subject to the requirements of §1807.402(a)(1)(vi) to maintain compliance with the CMF requirements and the Assistance Agreement. Deed restrictions, covenants running with the land, or other similar instruments may be used as the mechanism to impose a strategy. The Recipient shall report to the CDFI Fund the event of resale and/or recoupment and redeployment of the CMF Award, or an equivalent amount, in the manner described in the Assistance Agreement or other guidance issued by the CDFI Fund.

(3) The affordability restrictions are allowed to 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 termination of the affordability restrictions pursuant to any of the aforementioned terminating events will result in the Housing no longer being subject to a recoupment, replacement, and/or resale strategy as previously imposed by the Recipient. The Recipient 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 purchase.* Single-family housing that is currently owned by a qualifying Family, as set forth in §1807.400, qualifies as Affordable Housing if it meets the following requirements of this paragraph (b):

(1) The estimated value of the Single-family housing, after Rehabilitation, does not exceed the purchase price limits for the area, as used in the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index designated by the CDFI Fund. The underlying mortgage(s) should be affordable for the Homebuyer;

(2) The Single-family housing is owned by a qualifying Family as set forth in §1807.400 and is the only principal residence of the Family at the time of Project Commitment and remains the principal residence of the Family throughout the Affordability Period as described in paragraph (b)(3) of this section;

(3) Single-family housing under this paragraph (b) must meet the affordability requirements during the Affordability Period upon Project Completion or meet the recoupment, replacement, and/or resale provisions of paragraph (a)(5) of this section; and

(4) Single-family housing under this paragraph (b) currently owned by a qualifying Family may be rehabilitated to convert a portion of the Housing into one to three permanent additional units, each with a separate means of ingress/egress, kitchen, sleeping area, bathing area, and bathroom facilities, independent of the primary dwelling. The additional units may be rented as Permanent Housing as long as the primary dwelling remains the principal residence of the Family. While the Affordability Period applies to the primary dwelling, it does not apply to the additional units discussed in this section.

(c) *Ownership interest.* The owner must meet the definition of Homebuyer and the ownership in the Single-family housing assisted under this section must meet the definition of Homeownership as defined in §1807.104.

(d) *New construction without Purchase.* Newly constructed Single-family housing that is built on property currently owned by a Family that will occupy the Single-family housing upon Project 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.* Rental CMF Units may be converted to Homeownership units by selling, donating, or otherwise conveying the units to the existing tenants only under an existing documented rent-to-own program to enable the tenants to become Homebuyers in accordance with the requirements of this section. The Homeownership units are subject to a minimum period of affordability equal to

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the remaining rental Affordability Period, as further specified in the Assistance Agreement.

§ 1807.403 Economic Development Activities.

A CMF Award used for Economic Development Activities must stabilize, sustain, or revitalize communities and neighborhoods to meet the requirements set forth herein. For each individual CMF Award round, the Recipient may use no more than 30 percent of its CMF Award for Economic Development Activities, if such use is approved in its applicable Assistance Agreement.

(a) *Eligible uses.* A Recipient may use its Economic Development Activity Fund to finance and/or support Economic Development Activities through any Eligible Use pursuant to § 1807.301 except for Affordable Housing Fund.

(b) *Minimum use Term.* Community Service Facilities or physical structures resulting from Economic Development Activities must be used for allowable Economic Development Activities for a minimum of three years commencing with Project Completion.

(c) *Concerted strategy.* Economic Development Activities must complement and be undertaken as part of a Concerted Strategy that includes, but is not limited to, education, employment, transportation, financial services, commercial goods and services and other opportunities in a Low-Income Area or Underserved Rural Area.

(d) *In Conjunction with Affordable Housing Activities.* Economic Development Activities must be:

(1) Located in a Low-Income Area or Underserved Rural Area;

(2) Undertaken in conjunction with any affordable housing that is subject to or authorized by local, State or Federal laws; and

(3) Reasonably available, physically proximate, and benefit residents of such affordable housing. For a Metropolitan Area, the Economic Development Activities must be located within the same census tract or within one mile of such affordable housing. For a Non-Metropolitan Area, Economic Development Activities must be located within the same county, township, or village, or within 10 miles of such affordable housing.

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Subpart E—Leveraged Capital; Eligible Project Costs; Commitments; Project Completion

§ 1807.500 Leveraged Capital; Eligible Project Costs.

(a) *Eligible project costs.* Excluding both the total amount of Direct Administrative Expenses and Feasibility Determination Expenses, each CMF Award must result in Eligible Project Costs that equals at least 10 times the amount of the CMF Award, or some higher standard established by the CDFI Fund in the Recipient's Assistance Agreement. Such Eligible Project Costs must be for Affordable Housing Activities and Economic Development Activities, as set forth in the Assistance Agreement.

(b) *Leveraged capital.* (1) The applicable NOFA and/or the Assistance Agreement may set forth a required multiplier of Leveraged Capital that must be funded by private, non-governmental sources.

(2) The Recipient must report to the CDFI Fund the amount of Leveraged Capital, with the following limitations:

(i) No costs attributable to prohibited uses, as set forth in § 1807.302(a) and (b), may be reported as Leveraged Capital;

(ii) All uses of Leveraged Capital to finance and/or support Affordable Housing Activities shall comply with §§ 1807.400, 1807.401 and 1807.402, and as further described in the Assistance Agreement;

(iii) All uses of Leveraged Capital to finance and/or support Economic Development Activities shall comply with § 1807.403, and as further described in the Assistance Agreement.

§ 1807.501 Commitments.

(a) The CMF Award must be Committed for Use by the Recipient to one or more Eligible Uses as provided in § 1807.301 within two years from the Effective Date of the CMF Award, as such date designated in the Recipient's Assistance Agreement.

(b) The Recipient must achieve Project Commitment of the entire CMF Award within three years from the Effective Date of the CMF Award as designated in the Recipient's Assistance Agreement.

(c) The Recipient must evidence a Project Commitment with a written, legally binding agreement to invest in a Project by providing the CMF Award proceeds to the qualifying Family, developer or project sponsor in which:

(1) Construction on real estate can reasonably be expected to start within 12 months of the Project Commitment agreement date; or

(2) Property title on real estate will be transferred within six months of the Project Commitment agreement date; or

(3) Construction schedule on real estate ensures Project Completion within five years of a date specified in the Assistance Agreement; or

(4) The Recipient has entered into a Secondary Market Mortgage Purchase agreement with a third-party lender to purchase the qualified mortgages and the subject mortgages would not otherwise have been originated by the third-party lender absent that agreement; or

(5) A commitment for a qualified Homeownership Program has been made by the action of the Recipient's Board of Directors; or

(6) The Recipient has entered into a Loan Guarantee agreement or has established a cash reserve, escrow, or accounting-based accrual reserve with a lender or investor for a Loan Loss Reserve.

§ 1807.502 CMF Award limits.

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

§ 1807.503 Project Completion; Property standards.

(a) Upon Project Completion, the Project must be placed into service by the date designated in the Assistance Agreement. Project Completion for Affordable Housing Activities and Economic Development Activities occurs, as determined by the CDFI Fund, when:

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

(2) The property standards of paragraph (b) of this section have been met;

(3) The final drawdown of the CMF Award has been made to the project sponsor or developer;

(4) For Preservation, the refinancing of the loan is closed and the underlying real estate is in compliance with all CMF requirements and, if applicable, Rehabilitation is completed and the requirements set forth in this paragraph (a) are achieved;

(5) For qualified Secondary Market Mortgage Purchase, the loan purchase transaction is complete, all CMF Secondary Market Mortgage requirements are met, and the CMF Award is disbursed to the lender (*i.e.*, seller of the loan);

(6) For Loan Loss Reserves, the Loan Loss Reserve is established and the CMF Award is disbursed to an escrow, cash reserve, or obligated to an accounting-based accrual reserve to secure loans for Affordable Housing or Economic Development Activities that meet the requirements of subpart D of this part;

(7) For Loan Loss Guarantees, the Loan Guarantee is executed guaranteeing loans for Affordable Housing or Economic Development Activities that meet the requirements of subpart D of this part.

(b) By the Project Completion date, the Project must meet the requirements of this part, including the following property standards:

(1) *Code requirements.* Projects that are constructed or Rehabilitated with a CMF Award must meet all applicable State and local codes, Rehabilitation standards, ordinances, and zoning requirements at the time of Project Completion or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable) of the International Code Council.

(2) *Other requirements.* In addition, Projects must meet the following requirements:

(i) *Accessibility.* The Project must meet all applicable accessibility requirements set forth at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131 through 12189) implemented at 28 CFR parts 35 and 36, as applicable.

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Multi-family housing must meet all applicable design and construction requirements set forth in 24 CFR 100.205 which implement Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)(42 U.S.C. 3601-3619). Those design and construction requirements are the same rules that apply to “covered multifamily dwellings,” as defined in 24 CFR 100.201.

(ii) *Disaster mitigation.* The Project must meet all applicable State and local codes, ordinances, or other disaster mitigation requirements (e.g., earthquake, hurricanes, flooding, wild fires), or other requirements as the Department of Housing and Urban Development has established in 24 CFR part 93.

(iii) *Lead-based paint.* The Project must meet all applicable lead-based paint requirements, including those set forth in 24 CFR part 35.

(3) *Rehabilitation standards.* In addition, all Rehabilitation Projects must meet the following requirements:

(i) For rental Housing, if the remaining useful life of one or more major systems is less than the Affordability Period, the Recipient must ensure that, at Project Completion, the developer or Project sponsor establishes a replacement reserve and that monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. Major systems include: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; heating, ventilation, and air conditioning.

(ii) For Homeownership Single-family housing, the Recipient must ensure that, at Project Completion, the Housing is decent, safe, sanitary, and in good repair. The Recipient must ensure that timely corrective and remedial actions are taken to address identified life-threatening deficiencies.

(4) *Manufactured housing.* All manufactured housing must meet the Manufactured Home Construction and Safety Standards set forth in 24 CFR part 3280. These standards preempt State and local laws or codes, which are not identical to the Federal standards for the new construction of manufactured housing. The installation of all manufactured housing units must comply

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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 a CMF Award must meet the requirements set out in paragraph (b)(1) of this section.

Subpart F—Tracking Funds; Uniform Administrative Requirements; Nature of Funds

§ 1807.600 Tracking funds.

The Recipient shall develop and maintain an internal tracking and reporting system that ensures that the CMF Award is used in accordance with this part and the Assistance Agreement.

§ 1807.601 Uniform Administrative Requirements.

The Uniform Administrative Requirements apply to all CMF Awards.

§ 1807.602 Nature of funds.

CMF Awards are Federal financial assistance with regard to the application of Federal civil rights laws.

Subpart G—Notice of Funds Availability; Applications

§ 1807.700 Notice of funds availability.

Each Applicant must submit a CMF Award Application in accordance with the applicable Notice of Funds Availability (NOFA) published in the FEDERAL REGISTER. The NOFA will advise prospective Applicants on how to obtain and complete an Application and will establish deadlines and other requirements. The NOFA will specify Application evaluation factors and any limitations, special rules, procedures, and restrictions for a particular Application round. After receipt of an Application, the CDFI Fund may request clarifying or technical information on the materials submitted as part of the Application.

§§ 1807.701–1807.799 [Reserved]

Subpart H—Evaluation and Selection of Applications**§ 1807.800 Evaluation and selection—general.**

Each Applicant will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive a CMF Award based on a review process that will include a paper or electronic Application, and may include an interview(s) and/or site visit(s), and that is intended to:

(a) Ensure that Applicants are evaluated in a fair and consistent manner based on the criteria outlined in the NOFA;

(b) Ensure that each Recipient can successfully meet its performance goals and achieve Affordable Housing Activity and Economic Development Activity impacts;

(c) Ensure that Recipients represent a geographically diverse group of Applicants serving Metropolitan Areas and Rural Areas across the United States to address economic distress. Criteria of economic distress 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 disinvestment;

(4) Economic Development Activities that target Extremely Low-Income, Very Low-Income, and Low-Income Families within the Recipient's Service Area; and

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

(d) Take into consideration other factors as set forth 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 § 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.

(c) *Other factors.* The CDFI Fund may consider any other factors that it deems appropriate in reviewing an Application, as set forth in the applicable NOFA, the Application and related guidance materials.

(d) *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.

(e) *Recipient selection.* The CDFI Fund will select Recipients based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part.

Subpart I—Terms and Conditions of a CMF Award**§ 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 for the CMF Award that may include, but are not limited to, the following:

(1) The amount of the CMF Award;

(2) The approved Eligible Uses of the CMF Award;

(3) The approved Service Area;

(4) The time period by which the CMF Award proceeds must be Committed for Use;

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

(6) Performance goals that have been established by the CDFI Fund pursuant to this part, the NOFA, and the Recipient's Application.

(b) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act or these regulations, or noncompliance with the terms and conditions of

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the Assistance Agreement, on the part of the Recipient, the CDFI Fund, in its discretion, may make a determination to:

- (1) Require changes in the performance goals set forth in the Assistance Agreement;
- (2) Revoke approval of the Recipient's Application;
- (3) Reduce or terminate the CMF Award;
- (4) Require repayment of any CMF Award that have been paid to the Recipient;
- (5) Bar the Recipient from applying 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 making a determination that the Recipient has failed to comply substantially with the Act or these regulations or an Assistance Agreement, the CDFI Fund shall provide the Recipient with reasonable notice and opportunity to cure any instances of noncompliance.

§ 1807.901 Payment of funds.

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

§ 1807.902 Data collection and reporting.

(a) *Data; general.* The Recipient must maintain such records as may be prescribed by the CDFI Fund that are necessary to:

- (1) Disclose the manner in which the CMF Award 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 the CMF Award.

(b) *Beneficiary demographics data.* The Recipient may be required to compile such data on the gender, race, ethnicity, national origin, or other infor-

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mation on individuals that are benefiting from the CMF Award, as the CDFI Fund shall prescribe in the Assistance Agreement. Such data will be used to determine whether residents of the Recipient's Service Area are adequately served and to evaluate the impact of the CMF Award.

(c) *Access to records.* The Recipient must submit 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 the Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CMF Award. The United States Government, including the U.S. 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 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 receive a CMF Award from the Recipient.

(d) *Retention of records.* The Recipient shall comply with all applicable record retention requirements set forth in the Uniform Administrative Requirements (as applicable), the Assistance Agreement and the applicable NOFA.

(e) *Data collection and reporting—(1) Financial reporting.* (i) All nonprofit organization Recipients that are required to have their financial statements audited pursuant to the Uniform Administrative Requirements, must submit their single-audits by a time set forth in the applicable NOFA or Assistance Agreement. Nonprofit organization Recipients (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to the Uniform Administrative Requirements, must submit to the CDFI Fund a statement signed by the Recipient's authorized representative or certified public accountant, asserting that the Recipient is not required to have a single-audit

pursuant to the Uniform Administrative Requirements as indicated in the Assistance Agreement. In such instances, the CDFI Fund may require additional audits to be performed and/or submitted to the CDFI Fund as stated in the applicable Notice of Funds Availability and Assistance Agreement.

(ii) For-profit Recipients (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 Accountants by a time set forth in the applicable NOFA or Assistance Agreement.

(iii) Regulated financial institutions (Insured Depository Institutions, Depository Institution Holding Companies, and Insured Credit Unions), including regulated nonprofit organizations, 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 Accountants by a time set forth in the applicable NOFA or Assistance Agreement.

(2) *Annual report.* (i) The Recipient shall submit a performance and financial report that shall be specified in the Assistance Agreement (annual report). The annual report consists of several components which may include, but are not limited to, a report on performance goals and measures, explanation of any Recipient noncompliance, and such other information as may be required by the CDFI Fund. The annual report components shall be specified and described in the Assistance Agreement.

(ii) The CDFI Fund will use the annual report to collect data to assess the Recipient's compliance with its performance goals and the impact of the CMF and the CDFI industry.

(iii) The Recipient is 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. If such other entities are required to provide information for the annual report, or such other documentation that the

CDFI Fund might require, the Recipient is responsible for ensuring that the information is submitted timely and complete. The CDFI Fund reserves the right to contact such other entities and require that additional information and documentation be provided.

(iv) The CDFI Fund's review of the compliance of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union with 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.

§ 1807.903 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Recipient shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, Uniform Administrative Requirements, and Executive Orders. Furthermore, Recipients must comply with the CDFI Fund's environmental quality regulations (12 CFR part 1815), as well as all other Federal environmental requirements applicable to Federal awards.

§ 1807.904 Lobbying restrictions.

No CMF Award may be expended by a Recipient 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 are applicable to all Recipients and insiders.

§ 1807.906 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control a Recipient by reason of any CMF Award provided under the Act for the purpose of any applicable law.

§ 1807.907

§ 1807.907 Limitation on liability.

The liability of the CDFI Fund and the United States Government arising out of any CMF Award shall be limited to the amount of the CMF Award. 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 a CMF Award should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

PART 1808—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS BOND GUARANTEE PROGRAM

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