

(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

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## § 1807.100

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### Subpart I—Terms and Conditions of CMF Award

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AUTHORITY: 12 U.S.C. 4569.

SOURCE: 81 FR 6437, Feb. 8, 2016, 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.

#### § 1807.101 Summary.

(a) Through the CMF, the CDFI Fund competitively awards 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.

(b) The CDFI Fund will select Recipients to receive CMF Awards through a merit-based, 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.

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

Restrictions on applying for, receiving, and using CMF Awards in conjunction with awards under other programs administered by the CDFI Fund (including, but not limited to, the Bank Enterprise Award Program, the CDFI Program, the CDFI Bond Guarantee Program, the Native American CDFI Assistance (NACA) Program, and the

New Markets Tax Credit Program) are as set forth in the applicable Notice of Funds Availability, Notice of Guarantee Availability, or Notice of Allocation Availability.

#### § 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;

*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;

*Affordable Housing Fund* means a revolving loan, grant or investment fund that is:

- (1) Managed by the Recipient; and
- (2) Uses its capital to finance Affordable Housing Activities;

*Applicant* means any entity submitting an application for a CMF Award;

*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, which agreement 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;

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

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

*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 Development 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 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 programs, and/or social services) operate that, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area;

*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 Project 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* means direct costs incurred by the Recipient, related to the financing of the Project as described in 2 CFR 200.413 of the Uniform Administrative Requirements;

*Economic Development Activity* means the development, preservation, acquisition and/or rehabilitation 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;

*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, original Assistance Agreement, along with all required supporting documentation, including the opinion of counsel, if required;

*Eligible-Income* means:

(1) Having, in the case of owner-occupied Housing units, annual income not in excess of 120 percent of the area median income adjusted for Family size in the same manner as HUD makes these adjustments for its other published income limits; and

(2) Having, in the case of rental Housing units, annual income not in excess of 120 percent of the area median income, adjusted for Family size in the same manner as HUD makes these adjustments for its published income limits;

*Eligible Project Costs* means Leveraged Costs plus those costs funded directly by a CMF Award;

*Extremely Low-Income* means:

(1) Having, in the case of owner-occupied Housing units, income not in excess of 30 percent 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 Family incomes and

(2) Having, in the case of rental Housing units, income not in excess of 30 percent 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 Family incomes;

*Family or 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, including Puerto Rico, Guam, American Samoa, the U. S. Virgin Islands, and the Northern Mariana Islands);

*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 in fee simple title interest in one- to four-unit Housing or in a condominium unit, or equivalent form of ownership approved by the CDFI Fund. The Recipient must determine whether ownership or membership in a cooperative or mutual housing project constitutes Homeownership under State law. The ownership interest is subject to the following additional requirements:

(1) Except as otherwise provided in paragraphs (1)(i), (ii), and (iii) of this definition, the land may be owned in fee simple or the homeowner may have a 99-year ground lease;

(i) For Housing located on Indian trust or restricted Indian lands, the ground lease must be for 50 years or more;

(ii) For Housing located in Guam, the Northern Mariana Islands, the U. S. Virgin Islands, and American Samoa, the ground lease must be 40 years or more;

(iii) For manufactured housing, the ground lease must be for a minimum period of 10 years or such other applicable time period regarding location set forth in this definition of Homeownership at the time of purchase by the homeowner;

(2) Ownership interest may not merely consist of a right to 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);

(3) Ownership interest may only be subject to the restrictions on resale 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;

*Housing* means Single-family 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) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories);

*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.*;

*In Conjunction With Affordable Housing* means:

- (1) Physically proximate to; and
- (2) Reasonably available to residents of Affordable Housing that is subject to Affordable Housing Activities. For a Metropolitan Area, In Conjunction With means located within the same census tract or within 1 mile of such Affordable Housing. For a Non-Metropolitan Area, In Conjunction With means located within the same county, township, or village, or within 10 miles of such Affordable Housing;

*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 as determined 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 Costs* means costs for Affordable Housing Activities and Economic Development Activities that exceed the dollar amount of the CMF Award, as further described in §1807.500;

*Loan Guarantee* means the Recipient's use of CMF Award to support 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. 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:

- (1) Having, in the case of owner-occupied Housing units, income not in excess of 80 percent of 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; and

- (2) Having, in the case of rental Housing units, income not in excess of 80 percent of 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 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;

*Low Income Housing 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;

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

*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 of formation; and

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

*Participating Jurisdiction* means a jurisdiction designated by HUD as such under the HOME Program in accordance with the requirements of 24 CFR 92.105;

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

*Preservation* means:

(1) Activities to refinance, with or without Rehabilitation, Single-family housing or Multi-family housing (rental) mortgages that, at the time of refinancing, are subject to affordability and use restrictions under the LIHTC statute or under State or Federal affordable housing programs, including but not limited to, the HOME Program, properties with Federal project-based rental assistance, or the USDA rental housing programs, hereinafter referred to as "similar State or Federal affordable housing programs," where such refinancing has the effect of extending the term of any existing affordability and use restrictions on the properties by a minimum 10 years or as otherwise specified in the Assistance Agreement;

(2) Activities to refinance and acquire Single-family housing or Multi-family housing that, at the time of refinancing or acquisition, were subject to affordability and use restrictions under similar State or Federal afford-

able housing programs or under the LIHTC statute, by the former tenants of such properties, where such refinancing has the effect of extending the term of any existing affordability and use restrictions on the properties by a minimum 10 years or as otherwise specified in the Assistance Agreement;

(3) Activities to refinance the mortgages of owner-occupied, Single-family 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 existing affordability and use restrictions on the properties by a minimum 10 years or as otherwise specified in the Assistance Agreement;

(4) Activities to acquire Single-family housing 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 housing or Multi-family housing, with the commitment to subject the properties to the affordability qualifications set forth in subpart D of this part;

*Program Income* means gross income, as further described in 2 CFR part 1000;

*Project* means the Affordable Housing Activity and/or Economic Development Activity that is financed with the CMF Award;

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

*Purchase* means to provide direct financing to a Family for purposes of Homeownership. Before the Recipient provides any financing to a Family for Homeownership purposes, the Recipient must verify that the Family and the Single-family housing 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 a pool of funds managed by the Applicant or the Recipient wherein repayments on loans for Affordable Housing Activities or Economic Development Activities are used to refinance additional loans;

*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 Recipient with other lenders (e.g., participation loans);

*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;

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

*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 U.S. Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other 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 owned or Controlled directly or indirectly by another company;

*Underserved Rural Area* means:

(1) A Non-Metropolitan Area that:

(i) Qualifies as a Low-Income Area; and

(ii) Is experiencing economic distress evidenced by 30 percent or more of resident households with one or more of these four housing conditions in the most recent census for which data are available:

(A) Lacking complete plumbing;

(B) Lacking complete kitchen;

(C) Paying 30 percent or more of income for owner costs or tenant rent; or

(D) Having more than 1 person per room;

(2) An area as specified in the applicable NOFA and/or Assistance Agreement;

*Uniform Administrative Requirements* means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000);

*Very Low-Income* means:

(1) Having, in the case of owner-occupied Housing, income not greater than 50 percent 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 50 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; and

(2) Having, in the case of rental Housing, income not greater than 50 percent 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 50 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 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 OMB control number.

The OMB control number for the CMF Award application is 1559-0036. The compliance date requirements for the collection of information in § 1807.902 is stayed indefinitely, pending

## § 1807.107

Office of Management and Budget approval and assignment of an OMB control number.

### § 1807.107 Applicability of regulations for CMF Awards.

As of February 8, 2016, the regulations of this part are applicable for CMF Awards made pursuant to Notices of Funds Availability published after February 8, 2016.

### 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. 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 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

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Certified CDFI during the application eligibility review.

### Subpart C—Eligible Purposes; Eligible Activities; Restrictions

#### § 1807.300 Eligible purposes.

Each Recipient must use its CMF Award for the eligible activities described in § 1807.301 so long as such eligible activities 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/or

(b) Economic Development Activities.

(1) Economic Development Activity must support Affordable Housing;

(2) The Recipient may undertake Economic Development Activity In Conjunction With Affordable Housing Activities that are undertaken by parties other than the Recipient;

(3) If the Recipient uses its CMF Award to fund an Economic Development Activity In Conjunction With Affordable Housing Activity, it must track the resulting Affordable Housing, as set forth in subpart D of this part, to the extent the Affordable Housing was financed by the CMF Award. For the purposes of meeting the 10-year affordability period requirement, Recipients are not required to track Affordable Housing that was financed by sources other than the CMF Award.

#### § 1807.301 Eligible activities.

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

(a) To capitalize 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;

(e) To make Risk-Sharing Loans; and

(f) To provide Loan Guarantees.

**§ 1807.302 Restrictions on use of 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) Student 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

(2) Farming activities (within the meaning of 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 a trade or business, exceeds \$500,000.

(c) In any given application round, no more than 30 percent of a CMF Award may be used for Economic Development Activities.

(d) Any Recipient that uses its CMF Award for a Loan Guarantee or Loan Loss Reserves must ensure the underlying loan(s) are made to support Affordable Housing Activities and Economic Development Activities. The Affordable Housing resulting from the Recipient's Loan Guarantee or Loan Loss Reserve shall be tracked for 10 years, 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 repaid funds for Loan Guarantees or Loan Loss Reserves targeted to the income population (Extremely Low-Income, Very Low-Income, Low-Income) set forth in the Recipient's Assistance Agreement, for the duration of the Investment Period.

(f) The Recipient may not use more than five (5) percent of its CMF Award for Direct Administrative Expenses.

**§ 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 for the approved, eligible CMF Award uses as further set forth in the Assistance Agreement for the duration of the Investment Period.

(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 1000.

**Subpart D—Qualification as Affordable Housing****§ 1807.400 Affordable Housing—general.**

Each Recipient that uses its CMF Award for Affordable Housing Activities must ensure that 100 percent of Eligible Project Costs are attributable to Affordable Housing; meaning, that they comply 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.

**§ 1807.401 Affordable Housing—Rental Housing.**

To qualify as Affordable Housing, each rental Multi-family housing Project financed with CMF Award must have at least 20 percent of the units occupied by any combination of Low-Income, Very Low-Income, or Extremely Low-Income Families and must comply with the rent limits set forth herein. However, 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 application round, as set forth in the NOFA and Assistance Agreement for that application round.

(a) *Rent limitation.* The gross rent limits for Affordable Housing are determined under the provisions in IRC section 42(g)(2). In this determination, if this part imposes an income restriction on a unit that is greater than 60 percent of area median income, adjusted for Family size, then the provisions of IRC section 42(g)(2) are applied as if that income restriction on the unit satisfied IRC section 42(g)(1). 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 number of bedrooms in the unit, as set forth in IRC section 42(g)(2).

(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 number of bedrooms in the unit, as set forth in IRC section 42(g)(2). If the unit or tenant receives Federal or State rental subsidy, and the Family pays as a contribution towards rent not more than 30 percent of the Family's income, the maximum rent (*i.e.*, tenant contribution plus rental subsidy) is the rent allowable under the Federal or State rental subsidy program;

(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 number of bedrooms in the unit as described in para-

graph (a) of this section. If the unit or tenant receives Federal or State rental subsidy, and the Family pays as a contribution towards rent not more than 30 percent of the Family's income, the maximum rent (*i.e.*, tenant contribution plus rental subsidy) is the rent allowable under the Federal or State rental subsidy program; 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 number of bedrooms in the unit as described in paragraph (a) of this section. If the unit or tenant receives Federal or State rental subsidy, and the Family pays as a contribution toward rent not more than 30 percent of the Family's income, the maximum rent (*i.e.*, tenant contribution plus rental subsidy) is the rent allowable under the Federal or State rental subsidy program.

(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 under IRC section 42(g)(2).

(d) *Periods of affordability.* Housing under this section 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. Other recordable mechanisms must be approved in writing and in advance by the CDFI Fund. The affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. However, 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.

(e) *Subsequent rents during the affordability period.* Any increase in rent for a CMF-financed unit requires that tenants of those units be given at least 30 days prior written notice before the implementation of the rent increase. Regardless of changes in annual rents and in median income over time, the CMF rents for a Project are not required to be lower than the CMF rent limits for the Project in effect at the time when the Project is Committed for use.

(f) *Tenant income determination.* (1) Each year during the period of affordability, the tenant's income shall be re-examined; tenant income examination and verification is ultimately the responsibility of the Recipient. Annual income shall include income from all household members. The Recipient must require the Project owner to obtain information on rents and occupancy of Affordable Housing financed or assisted 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) Although either of the above two definitions of "annual income" is 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 section.

(g) *Over-income tenants.* (1) CMF-financed or assisted 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 non-compliance 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 if the gross rent of a unit is subject to the restrictions in IRC section 42(g)(2) or the restrictions in an extended low-income housing commitment under IRC section 42(h)(6), then the tenants of that unit must pay rent governed by those restrictions. Tenants who no longer qualify as Eligible-Income 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-financed or assisted unit no longer qualifies, the Recipient may designate another unit, within the CMF-financed or assisted Project, as a 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

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the CMF requirements and the Assistance Agreement.

### § 1807.402 Affordable Housing—Homeownership.

(a) *Purchase with or without Rehabilitation.* A Recipient that uses the CMF Award for the eligible activities set forth in § 1807.301 for Purchase must ensure the purchasing Family and Housing meets the affordability requirements of this subpart.

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

(2) The Single-family 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 HUD and the applicable Participating Jurisdiction.

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

(4) *Periods of affordability.* Single-family housing under this section must meet the affordability requirements for at least 10 years at the time of purchase by the Family.

(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 Recipient. 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, an amount equal to the amount of the CMF Award investment in the Housing, whether recouped or not, is used to finance additional Affordable Housing Activities for a qualifying Family in the same income category for Affordable Housing Homeownership in the manner set forth in this section, except that the Housing must meet the affordability requirements only for the remaining duration of the affordability period. The Recipient 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 a resale 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. 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 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. If there is a sale of Single-family housing funded by a CMF Award prior to the completion of the 10-year affordability period, the Recipient must demonstrate that it placed into service Single-family housing targeting the same income population (*i.e.*, Extremely Low-Income, Very Low-Income, Low-Income) as the original Single-family housing, as set forth in the Assistance Agreement, financed with an equivalent amount to the recouped portion of the CMF Award, that will be tracked for the duration of the affordability period of the original Single-family 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 requirements of this paragraph (b).

(1) The estimated value of the Single-family housing, after Rehabilitation, 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; or

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

(3) Single-family housing under this paragraph (b) must meet the affordability requirements for at least 10 years after Rehabilitation is completed or meet the resale provisions of paragraph (a)(5) of this section.

(c) *Ownership interest.* 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 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-financed 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 this section. The Homeownership units are subject to a minimum period of affordability equal to the remaining affordability period.

### Subpart E—Leveraged Costs; Eligible Project Costs; Commitment Requirements

#### § 1807.500 Leveraged Costs; Eligible Project Costs.

(a) Each CMF Award must result in Eligible Project Costs in an amount 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 Costs.* (1) The applicable NOFA and/or the Assistance Agreement may set forth a required percentage of Leveraged Costs that must be funded by non-governmental sources.

(2) The Recipient must report to the CDFI Fund all Leveraged Costs, 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 Costs;

(ii) All Leveraged Costs attributable to Affordable Housing Activities must be for Affordable Housing, as set forth in § 1807.401 or § 1807.402, and as further described in the Assistance Agreement;

(iii) All eligible Leveraged Costs attributable to Economic Development Activities shall be described in the Assistance Agreement.

(c) Recipients must report Leveraged Costs information through forms or electronic systems provided by the CDFI Fund. Consequently, Recipients must maintain appropriate documentation, such as audited financial statements, wire transfers documents, proformas, and other relevant records, to support such reports.

#### § 1807.501 Commitments; Payments.

(a) The CMF Award must be Committed by the Recipient for use by the date designated in its Assistance Agreement.

(b) The Recipient must evidence such commitment with a written, legally binding agreement to provide CMF Award proceeds to the qualifying Family, developer or project sponsor for a Project whose:

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

(2) Property title will be transferred within 6 months of the commitment agreement date; or

(3) Construction schedule ensures Project Completion within 5 years of a date specified in the Assistance Agreement.

(c) The CDFI Fund will make Payment of CMF Award based on a deployment schedule contained in the CMF Award application, in addition to any other documentation and/or forms that the CDFI Fund may require.

(d) Upon receipt of CMF Award, the Recipient must make an initial disbursement of said CMF Award by the date designated in its Assistance Agreement. The CDFI Fund may make Payment of CMF Award in a lump sum or other manner, as determined appropriate by the CDFI Fund. The CDFI Fund will not provide any Payment until the Recipient has satisfied all

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conditions set forth in the applicable NOFA and Assistance Agreement.

### § 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 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 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; and

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

(4) When a CMF Award is used for Preservation, Project Completion occurs when the refinance and/or Rehabilitation is completed in addition to the requirements set forth in this paragraph (a).

(b) By the Project Completion date, the Project must meet the requirements of this part, including the following property standards (which must be met for a period of at least 10 years after the Project Completion date):

(1) 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) 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.

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12131–12189) implemented at 28 CFR parts 35 and 36, as applicable. Multi-family housing, as defined in 24 CFR 100.201, must also meet all applicable design and construction requirements set forth in 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

(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 that is financed with a CMF Award must meet the following requirements:

(i) For rental Housing, if the remaining useful life of one or more major systems is less than the 10-year period of affordability, 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 by the Project owner to address identified life threatening deficiencies.

(4) *Manufactured housing*. Construction of 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 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. CMF Award funds retain their Federal character until the end of the Investment Period.

### **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.

### **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 on a merit basis and in a fair and consistent manner;

(b) Ensure that each Recipient can successfully meet its leveraging 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 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 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

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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 a CMF Award to generate additional investments, including private sources of funding;

(2) The need for affordable housing in the Applicant’s Service Area;

(3) The ability of the Applicant to obligate amounts and undertake activities in a timely manner; and

(4) In the case of an Applicant that has previously received assistance under any CDFI Fund program, 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.

(c) 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 or the applicable NOFA.

**Subpart I—Terms and Conditions of 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 uses of the CMF Award;

(3) The approved Service Area;

(4) The time period by which the CMF 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 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 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 for hearing.

**§ 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) *Customer profiles.* The Recipient must compile such data on the gender, race, ethnicity, national origin, or other information 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 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 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) and the Assistance Agreement.

(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) 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) *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

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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.

(f) *Public access.* The CDFI Fund shall make reports described in this section available for public inspection after deleting or redacting any materials necessary to protect privacy or proprietary interests.

### § 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 con-

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nection 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 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

### Subpart A—General Provisions

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