

DEPARTMENT OF THE TREASURY**Community Development Financial Institutions Fund****12 CFR Part 1805**

RIN 1505-AA71

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program) administered by the Community Development Financial Institutions Fund (Fund). The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial and technical assistance in the form of grants, loans, equity investments and deposits to competitively selected CDFIs. The Fund provides such assistance to CDFIs to enhance their ability to make loans and investments, and to provide services for the benefit of designated investment areas, targeted populations, or both. After selection for such assistance, each CDFI will enter into an assistance agreement with the Fund that will include performance goals, matching funds requirements and reporting requirements. This revised interim rule: Revises, clarifies and streamlines CDFI certification and funding eligibility requirements; affords CDFIs greater flexibility in meeting matching funds requirements; clarifies the funding and certification applications' content requirements and evaluation criteria; reduces the frequency of previously approved collections of information by replacing some of the quarterly reporting requirements with semi-annual reporting requirements and other quarterly reporting requirements with annual reporting requirements; and makes other technical and clarifying changes that the Fund believes will inure to the benefit of CDFIs and entities proposing to become CDFIs.

DATES: Revised interim rule effective November 1, 1999; comments must be received in the offices of the Fund on or before January 14, 2000.

ADDRESSES: All comments concerning this interim rule should be addressed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's web site at <http://www.treas.gov/cdfi>.

FOR FURTHER INFORMATION CONTACT: Maurice A. Jones, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, at (202) 622-8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:**I. Background**

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. The initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left out of the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people. Over the past several decades, community-based financial institutions have proven that strategic lending and investment activities tailored to the unique characteristics of underserved markets are highly effective in improving the economic well being of communities and the people who live there.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to community development financial institutions (CDFIs), which specialize in serving underserved markets and the people who live there. CDFIs—while

highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Under the CDFI Program, the Fund provides CDFIs with financial and technical assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Applicants participate in the CDFI Program through a competitive application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. Program participants generally receive monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

This issue of the **Federal Register** contains two separate Notices of Funds Availability (NOFAs) for the CDFI Program, one for the fifth round of the Core Component of the CDFI Program and another for the fourth round of the Intermediary Component of the CDFI Program. Under the Core Component, the Fund provides financial and technical assistance to CDFIs that directly serve their Target Markets through loans, investments and other activities, rather than primarily through the financing of other CDFIs. Under the Intermediary Component, the Fund provides financial and technical assistance to CDFIs that primarily provide assistance to other CDFIs and/or support the formation of CDFIs. In January 2000, the Fund expects to issue a NOFA for the third round of the Technical Assistance Component of the CDFI Program. Under the Technical Assistance Component, the Fund provides CDFIs with technical assistance in the form of grants that may be used to enhance the capacity of CDFIs through the acquisition of training services, consulting services, and/or technology. Since these regulations were last amended, the Fund has identified a number of provisions that need to be updated, clarified, expanded, and simplified.

II. Summary of Changes**Authorities**

The current rule contains a list of authorities. This interim rule updates the list by adding 31 U.S.C. 321, which governs the promulgation of regulations. The current rule lists 12 U.S.C. 4703 note with a reference to Public Law

104-19. The Fund is deleting the reference to this public law, for purposes of regulatory economy and because there is more than one public law underlying the § 4703 note.

Relationship to Other Fund Programs

Section 1805.102(a) of the current rule prohibits, under certain circumstances, an Insured CDFI from receiving funding under both the Bank Enterprise Award (BEA) Program and the CDFI Program. This interim rule revises § 1805.102(a) to conform more closely with the counterpart provision contained in the BEA Program regulations (12 CFR 1806.102(a)) and the Bank Enterprise Act of 1991, as amended, (12 U.S.C. 1834a(g)).

Definitions

Section 1805.104 of the current rule contains a list of definitions. This interim rule revises § 1805.104 by amending several definitions and adding new definitions. First, § 1805.104(h) adds a new definition for "Community Development Financial Institution Intermediary" in recognition of the CDFI Program's Intermediary Component.

Second, § 1805.104(p) of the current rule contains a definition of "Development Investment." In § 1805.104(r) of this interim rule, the Fund is renaming "Development Investment" as "Equity Investment" and is adding an inclusive list of items that comprise "Equity Investments." This inclusive list is largely derived from the BEA Program regulation definition of equity investment at 12 CFR 1806.103(t). Under this interim rule, Equity Investments can comprise loans made on such terms that they have sufficient characteristics of equity and are considered as such by the Fund. Specifically, the Fund will generally consider a loan to be equity-like where: (1) the repayment of loan principal and/or interest is payable only out of available cash flow, so nonpayment of principal and/or interest will not automatically result in a default; (2) the maturity date of the loan is indeterminate in that the debtor is required to repay the principal on the maturity date only if it has sufficient resources; and (3) the loan is subordinated to payment obligations due all other creditors of the debtor, except other holders of similar type loans. The Fund also interprets "Equity Investment" to comprise secondary capital accounts established with low-income designated credit unions under 12 CFR 701.34. In order to distinguish "equity investments" made by the Fund from "Equity Investments" made by

CDFIs, this interim rule distinguishes the two by capitalizing "Equity Investments" made by CDFIs.

Third, § 1805.104(q) of the current rule defines "Development Services" as activities that promote community development and are integral to lending and Development Investment activities and which prepare potential borrowers or investees to utilize the lending or investment products of the Awardee, its Affiliates, or its Community Partners. Section 1805.104(q) of this interim rule defines "Development Services" as activities that promote community development and are integral to the Applicant's provision of Financial Products and which prepare current or potential borrowers or investees to utilize the Financial Products of the Applicant. This interim rule replaces "Awardee" with "Applicant" because the provision of Development Services is necessary, as a threshold matter, for an institution to be eligible to apply for and receive assistance under the CDFI Program. This interim rule deletes references to the Awardee's Affiliates, or its Community Partners, because the Fund believes that the provision of Development Services must prepare the Awardee's current or potential borrowers or investees to utilize the Financial Products of the Awardee itself and not those of its Affiliates or its Community Partners. "Financial Products" is a new term defined in § 1805.104(s) of this interim rule, and is discussed below.

Fourth, § 1805.104(s) of this interim rule adds a definition of "Financial Products." This interim rule defines "Financial Products" as loans and Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs. The Fund is adding this definition as a shorthand definition for loans and Equity Investments made by CDFIs. The rationale for the Fund's expansion of the definition for CDFI Intermediaries is explained below under *Applicant Eligibility*.

Fifth, § 1805.104(ii) of this interim rule adds a definition of "Target Market" as comprising an Investment Area(s) and/or Targeted Population(s). The Fund is adding this definition to clarify the meaning of such term, which is contained throughout this interim rule.

Applicant Eligibility

Section 1805.200 of the current rule contains eligibility requirements for an entity to qualify as a CDFI and apply for assistance under the CDFI Program.

Section 1805.200(a)(2) of the current rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund determines that such entity will meet the CDFI eligibility requirements within two years of entering into an Assistance Agreement with the Fund or such lesser period as may be set forth in an applicable Notice of Funds Availability (NOFA). The Fund believes that the time frame contained in the current rule is too indeterminate and is a frequent source of confusion for Applicants. The Fund believes that a clearer and more measurable time frame for determining eligibility is appropriate and will better serve the interests of the affected community. As a result, § 1805.200(a)(2) of this interim rule requires an entity to meet the CDFI eligibility requirements within 24 months from September 30 of the calendar year in which the applicable NOFA application deadline falls or such other period as may be set forth in the applicable NOFA. Under this interim rule, such other period can be a period lesser or greater than the 24 months described above.

Sections 1805.200(b)-(g) of the current rule contains six criteria that an entity must meet to qualify as a CDFI. In addition, §§ 1805.701(b)(1)-(8) of the current rule contains the application content requirements governing how an entity applying for assistance under the CDFI Program is to demonstrate that it meets the CDFI eligibility requirements described in § 1805.200 of the current rule. The Fund believes that the segregation of these two sections is too diffuse and too confusing for Applicants. The Fund also believes that §§ 1805.200(b)-(g) and 1805.701(b)(1)-(8) of the current rule should be consolidated for purposes of regulatory economy and efficiency. As a result, the Fund has decided to consolidate these sections into § 1805.201(b) of this interim rule.

Section 1805.200(b) of the current rule provides that in order to qualify as a CDFI, an entity must have a primary mission of community development. Section 1805.701(b)(1) of the current rule provides that in determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant and its Affiliates are principally directed toward serving an Investment Area(s), a Targeted Population(s), or a combination of the two. The Fund has decided to revise the primary mission test, because the Fund believes the current test to be: (1) partially duplicative of the Target Market eligibility test under §§ 1805.200(c) and 1805.701(b)(2) of the current rule, which

requires an Applicant to establish that its total activities (excluding information on any Affiliates) are principally directed toward serving an Investment Area(s), Targeted Population(s), or both; and (2) unduly burdensome on Applicants in terms of providing the requisite level of data. As a result, § 1805.201(b)(1) of this interim rule provides that in determining whether an Applicant meets the primary mission eligibility test, the Fund will consider whether the activities of the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas). The Fund believes that § 1805.201(b)(1) of this interim rule will reduce burdens associated with meeting the primary mission eligibility test, because the market that an Applicant (and its Affiliates) must serve in order to meet this test is no longer restricted to Investment Areas or Targeted Populations. However, the Fund is still requiring Applicants to meet the same Target Market eligibility test of the current rule as described in § 1805.201(b)(3) of this interim rule.

The Fund intends to implement the primary mission eligibility test as follows. The Fund will review the incorporating documents, bylaws, annual reports, and/or other organizational documents of an Applicant and its Affiliates to determine whether the activities of the Applicant and its Affiliates, as a whole, are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of distressed communities. In circumstances where the organizational documents do not, in the judgment of the Fund, demonstrate such a primary mission, the Fund will examine whether the actual activities of the Applicant and its Affiliates, combined, demonstrates such a primary mission.

Sections 1805.200(d) and 1805.701(b)(4) of the current rule contain the Financing entity eligibility test, which provides that in order for an entity to qualify as a CDFI, such entity's predominant business activity must be, through arms-length transactions, the provision of loans, Development Investments, and/or other similar financing. Because the Act provides that a CDFI must provide Development Services in conjunction with loans and Equity Investments (12 U.S.C.

4702(5)(A)(iii)) and because Development Services support an Applicant's financing activities, § 1805.201(b)(2) of this interim rule provides that an entity's predominant business activity must be the provision, in arms-length transactions, of Financial Products, Development Services and/or other similar financing. The Fund interprets "other similar financing" as including: (1) pre-development grants, provided that, in the opinion of the Fund, they are offered to the entity's borrowers or potential borrowers; and (2) loan packaging, provided that, in the opinion of the Fund, the entity finances more than a nominal portion of the loan that is being packaged for another entity.

The Fund intends to implement the Financing entity eligibility test in § 1805.201(b)(2) of this interim rule as follows. First, the Fund will determine whether an entity's provision of Financial Products and Development Services, combined, comprise a simple majority of its activities (i.e., greater than 50 percent). If so, the entity will be deemed to have met the Financing entity eligibility test. If not, the Fund will then consider the extent to which the entity engages in other similar financing activities. If an entity's provision of Financial Products, Development Services and other similar financing activities, combined, comprises a simple majority of its activities, the entity will be deemed to have met the Financing entity eligibility test. If not, the Fund will then consider whether an entity's provision of Financial Products, Development Services and other similar financing activities, combined, comprise a plurality (the largest component) of the entity's activities. If an entity's provision of Financial Products, Development Services, and other similar financing activities, combined, comprise a plurality of its activities, the entity will be deemed to have met the Financing entity eligibility test.

Section 1805.701(b)(4)(ii)(C) of the current rule requires a Non-Regulated Applicant to demonstrate that it meets the Financing entity eligibility test by submitting, among other things, as many as three years of year-end financial statements. The Fund believes that this requirement is unduly burdensome on Applicants. Accordingly, § 1805.201(b)(2)(ii)(C) of this interim rule requires each Applicant to submit only its most recent year-end financial statements. However, the Fund reserves the right, consistent with § 1805.600 of this interim rule, to require Applicants to submit prior years' financial statements, if the Fund deems it

appropriate. Furthermore, the Fund believes that in order to more effectively and accurately determine whether an Applicant's predominant business activity is the provision of Financial Products, Development Services, and/or other similar financing, the Fund needs to examine an Applicant's allocation of staff resources. Accordingly, § 1805.201(b)(2)(ii)(C) requires an Applicant to provide qualitative and quantitative information on the percentage of Applicant staff time dedicated to the provision of Financial Products, Development Services and/or other similar financing.

As discussed above, Financial Products comprise loans and Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs. The Fund's rationale for including the aforementioned grants and deposits of CDFI Intermediaries is that said grants and deposits will, consistent with § 1805.100 of this interim rule, facilitate the creation of a national network of financial institutions dedicated to community development. In some cases, grants and deposits constitute the primary means by which a CDFI Intermediary fulfills its role of supporting the creation and development of CDFIs. Further, grants constitute the most attractive form of capital to enable CDFIs to expand or to facilitate the start-up of new or emerging CDFIs. Deposits in insured credit union CDFIs in the form of Share Certificates constitute one of the most effective ways to provide capital to a credit union CDFI. The Fund believes that encouraging CDFI Intermediaries to provide capital to CDFIs and CDFIs in formation in the most effective and attractive forms possible furthers the purposes of the Act by enhancing the liquidity of CDFIs so that they may pursue economic revitalization in communities throughout the United States.

Section 1805.200(e) of the current rule contains the Development Services eligibility test, which provides that in order for an entity to qualify as a CDFI, the entity must directly, or through an Affiliate, provide Development Services. The Fund believes that this language should be expanded to reflect the fact that an entity may provide Development Services through a contractual agent. Accordingly, § 1805.201(b)(4) of this interim rule provides that the entity must directly, through an Affiliate or through a contract with another provider, provide Development Services.

Certification as a Community Development Financial Institution

Section 1805.201 of the current rule provides that an entity may apply for certification as a CDFI and also provides that the Fund may decertify a certified entity after a determination that it no longer meets the eligibility requirements of §§ 1805.200(b) through (h). The Fund believes that this language should be expanded to include the additional eligibility requirements that the Fund may impose in accordance with § 1805.200(a)(3) of the current rule. Accordingly, § 1805.201(a) of this interim rule provides that the Fund may decertify a certified CDFI after a determination that it no longer meets the eligibility requirements of § 1805.201(b), § 1805.200(b), or § 1805.200(a)(3).

Sections 1805.300 through 1805.302 of the current rule discuss in greater detail the Target Market eligibility test contained in § 1805.200(c) of the current rule. The Fund has decided to consolidate these sections into § 1805.201(b) of this interim rule for purposes of regulatory economy and efficiency. The Fund also has made numbering changes to the subsequent sections to conform with this consolidation.

Section 1805.301(d) of the current rule contains a listing of objective criteria of economic distress necessary for geographic unit(s) to qualify as an eligible Investment Area. These criteria include the percentage of the population living in poverty, the percentage of Low-Income households, the unemployment rate, the percentage of occupied distressed housing, and the county population loss. These criteria conform with the Act (12 U.S.C. 4702(16)(A)(i)), which confers upon the Fund the authority to expand these distress criteria to include rural population outmigration. Accordingly, the Fund has decided to add rural population net migration loss to the list of objective criteria of economic distress. This new objective criterion is found in § 1805.201(b)(3)(ii)(D)(5)(ii) of this interim rule, and provides that for areas located outside of a Metropolitan Area, the county net migration loss (outmigration less immigration) over the five year period preceding the most recent decennial census is at least 5 percent.

Section 1805.302(c) of the current rule provides that an Applicant shall provide its products and services in a manner consistent with the Equal Credit Opportunity Act, to the extent that the Applicant is subject to such Act. The Fund is deleting this language from this

interim rule for purposes of regulatory economy and efficiency inasmuch as this requirement is already reflected in § 1805.905 of the current rule (§ 1805.805 of this interim rule), which provides that an Awardee shall comply with all applicable Federal laws.

Section 1805.302(a) of the current rule provides that a Targeted Population may include an identifiable group of individuals that lack adequate access to loans or equity investments. Section 1805.701(b)(3)(ii)(B) of the current rule provides that in order for such an identifiable group to meet the Target Market/Targeted Population eligibility test, an Applicant must submit to the Fund studies or analyses that evidence lack of adequate access to loans or equity investments. The Fund believes that the current rule needs to be clarified to reflect that the identifiable group of individuals must be drawn from the Applicant's service area, and to more accurately reflect the information the Fund needs in determining whether an identifiable group of individuals lacks adequate access to loans or Equity Investments. Accordingly, § 1805.201(b)(3)(iii)(B)(2) of this interim rule provides that an Applicant must submit: (1) A description of the Applicant's service area from which the Targeted Population is drawn; (2) studies, analyses or other information demonstrating that the identifiable group of individuals, either on a national basis or on a localized basis in the Applicant's service area, lacks adequate access to loans and Equity Investments; and (3) studies, analyses or other information demonstrating that the Applicant's clients, who comprise the identifiable group of individuals, lack adequate access to loans or Equity Investments.

Technical Assistance

Section 1805.403(d) of the current rule provides that applications for technical assistance will be evaluated pursuant to the competitive review criteria contained in the evaluation provisions of the current rule (§ 1805.802(b)). The Fund believes that, in the interest of economy and efficiency, it needs the flexibility to streamline the competitive review and evaluation of applications for technical assistance, particularly those received under the CDFI Program Technical Assistance Component in which the maximum amount of technical assistance typically awarded is \$50,000. Section 1805.303(d) of this interim rule accomplishes this by providing that applications for technical assistance will be evaluated pursuant to the competitive review criteria contained in

the evaluation provisions of this interim rule (§ 1805.701(b)), except as otherwise may be provided in the applicable NOFA. Section 1805.303(d) of this interim rule confers upon the Fund the discretion to select the specific evaluation criteria contained in § 1805.701(b) of this interim rule that it intends to utilize in evaluating applications for technical assistance. However, this discretion is constrained by the Act, which expressly prescribes specific evaluation criteria that also are contained in § 1805.701(b) of this interim rule. As a result, the Fund's selection of evaluation criteria for applications for technical assistance will, without exception, include all statutorily prescribed evaluation criteria.

Matching Funds Requirements

Section 1805.600 of the current rule provides that funds used to satisfy a legal requirement for obtaining funds under another Federal grant or award program cannot be used to satisfy the matching requirements set forth in this section of the current rule. The Fund has decided to clarify this section by providing that in the case of an applicant that is a previous Awardee under the CDFI Program, such applicant cannot reuse matching funds used to satisfy the matching funds requirements for its prior CDFI Program award. Accordingly, § 1805.500 of this interim rule provides that funds used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements.

Section 1805.600 of the current rule provides that funds spent by an Applicant for operating expenses prior to the calendar year in which the applicable application deadline falls cannot be used to meet the matching funds requirements. The Fund has decided to eliminate this provision from § 1805.500 of this interim rule to ease the burden on Applicants of substantiating that such matching funds were not used for operating expenses. However, the Fund will continue to determine, under § 1805.500 of this interim rule, whether matching funds expended prior to the execution of an Assistance Agreement promoted the purposes of the Comprehensive Business Plan that the Fund is supporting through its assistance.

Section 1805.602 of the current rule contains a "severe constraints waiver" in which Applicants with severe constraints on available sources of matching funds may seek a reduction in the matching funds requirements.

Section 1805.602(b) of the current rule limits the Fund's availability to grant severe constraints waivers to not more than 25 percent of the total funds available for "obligation" in any fiscal year. The Fund is adding an additional sentence to this section, in conformance with the Act, which specifically provides that not more than 25 percent of the total funds "disbursed" in any fiscal year may receive a severe constraints waiver (12 U.S.C. 4707(e)(3)). Accordingly, the second sentence of § 1805.502(b) of this interim rule provides that not more than 25 percent of the total funds disbursed in any fiscal year may be matched under a severe constraints waiver.

Section 1805.603 of the current rule provides that Applicants may use as matching funds monies that have been obtained or legally committed for up to one year prior to the publication of a NOFA, or such earlier date or period specified in the NOFA, for an applicable funding round. The current rule also provides that an Applicant shall raise the balance of its matching funds within the period set forth in the applicable NOFA. For purposes of regulatory economy and efficiency, the Fund has decided to streamline this section. As a result, § 1805.503 of this interim rule provides that Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

Section 1805.604 of the current rule authorizes Applicants to utilize retained earnings as matching funds. Section 1805.604(d) of the current rule describes how retained earnings may be used by Insured Credit Unions to meet matching funds requirements. Insured Credit Unions are credit unions in which the member accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF). When the Fund originally promulgated the current rule it did not intend to exclude those credit unions whose member accounts are insured but not by the NCUSIF from § 1805.604(d) of the current rule. As a result, the Fund has revised § 1805.504(d) of this interim rule to cover all credit unions whose member accounts are insured and not just Insured Credit Unions.

Section 1805.604(d)(4)(i)(B) of the current rule requires Insured Credit Unions seeking to meet their matching funds requirements by utilizing retained earnings in the form of net capital accumulated since inception to increase their shares fourfold "within 18 months of the last day of the month prior to the month in which the Applicant is selected to receive assistance." The Fund believes that the time frame contained in the current rule is too

indeterminate, too short and a frequent source of confusion for Applicants. The Fund believes that a longer, clearer and more measurable time frame is appropriate and would better serve the interests of the affected community. As a result, § 1805.504(d)(4)(i)(B) of this interim rule provides that the fourfold increase in shares must be achieved "within 24 months from September 30 of the calendar year in which the applicable application deadline falls."

Section 1805.604(d)(4)(i)(C) of the current rule requires that the fourfold increase in shares be maintained for the period of time covered by the Comprehensive Business Plan. The Fund is deleting this requirement in recognition of periodic fluctuations in share levels.

Section 1805.604(d)(4)(iii) of the current rule prescribes a bifurcated methodology for determining the appropriate baseline from which the fourfold increase in shares is measured. The Fund believes that the current bifurcated methodology is a frequent cause of confusion for Applicants. As a result, the Fund has decided to simplify this methodology through a fixed and more easily determinable baseline. Specifically, § 1805.504(d)(4)(iii) of this interim rule provides that the baseline will be as of September 30 of the calendar year in which the applicable application deadline falls.

Section 1805.604(e) of the current rule provides that an Applicant may only use retained earnings to meet matching funds requirements if it has liquidity (as determined by the Fund) in amounts equal to or greater than the amount of retained earnings that is proposed to be used to meet matching funds requirements. For purposes of regulatory economy and efficiency, the Fund has decided to eliminate this requirement.

Applications for Assistance

Section 1805.701 of the current rule provides that an Applicant may present its application in an order and format that it believes to be the most appropriate. The Fund has found that affording Applicants such flexibility makes it considerably more difficult for the Fund to evaluate applications. The Fund also believes that requiring all applications to be in the same order and format will inure to the benefit of all Applicants by ensuring a more efficient evaluation process. As a result, § 1805.601 of this interim rule deletes this provision.

Section 1805.701 of the current rule contains the application content requirements. The Fund has decided to revise this section (§ 1805.601 of this

interim rule) to reduce burdens on Applicants.

For example, § 1805.701(d)(2)(iii)(B) of the current rule requires an Applicant to submit financial statements that utilize accrual based accounting methods. Section 1805.601(d)(4) of this interim rule continues to require the submission of financial statements but eliminates the requirement that such financial statements reflect accrual based accounting methods. The Fund believes that the elimination of this requirement will reduce burdens on those Applicants that currently utilize cash-based accounting methods. In addition, § 1805.701(e)(2) of the current rule requires an Applicant to submit a description of matching funds previously obtained or legally committed and related matching funds documentation in the form of agreements, letters of intent, and memoranda of understanding. Section 1805.601(d)(8)(ii) of this interim rule continues to require an Applicant to submit a description of matching funds previously obtained or legally committed, but deletes the requirement that an Applicant submit with its application related matching funds documentation. The Fund will only request such matching funds documentation from those Applicants that advance to the second phase of the Fund's substantive review process.

The Fund also has decided to reformat § 1805.601 of this interim rule to conform more closely with the Fund's new application packet. The new application packet contains several changes that also are intended to reduce burdens on Applicants. For example, the new application packet is a stand-alone document that identifies all application content requirements. Previous application packets directed Applicants to the current rule to ascertain the application content requirements. Applicants thus had to refer to two discrete documents in order to complete their applications. Such process has proven to be burdensome for Applicants in that it increased the amount of time it took them to complete the applications. The new application packet also contains clearer instructions, and identifies for each component part of the application the evaluation criteria and the points allocated for each evaluation criteria.

Furthermore, in accordance with the authority conferred to the Fund under the Act (12 U.S.C. 4704(b)(6)), the Fund is adding a new application content requirement to better ensure that the Fund's resources promote economic revitalization and community development. Specifically,

§ 1805.601(d)(13) of this interim rule requires each Applicant to describe the extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan.

Evaluation and Selection of Applications

Section 1805.800 of the current rule provides that part of the Fund's evaluation process may include an interview(s). In the past two funding rounds of the CDFI Program, the Fund has conducted interviews telephonically and in the offices of the Applicant. Section 1805.700 of this interim rule clarifies that the Fund may conduct not only telephonic interviews but also interviews in the form of site visits to an Applicant's and/or an Applicant's clients', borrowers', or investees' places of business.

Section 1805.802(b) of the current rule contains an inclusive listing of application evaluation factors. The Fund has reformatted and revised these factors to better reflect the Fund's intention to achieve maximum community impact under the CDFI Program and to conform with the Fund's new application packet. Section 1805.802(b)(1) of the current rule includes as an evaluation factor the quality of an Applicant's Comprehensive Business Plan. The Fund is deleting this specific evaluation factor from § 1805.701(b) of this interim rule, because the Fund believes this factor is already captured in other evaluation factors. The deletion of this factor is not intended by the Fund to have any substantive effect.

Consistent with its authority under the Act (12 U.S.C. 4706(a)(14)), the Fund has decided to add a new evaluation factor. Specifically, § 1805.701(b)(9) of this interim rule provides that the Fund will consider the extent of need for its assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market, and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan. In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) between the Fund and the Applicant, and whether the Applicant will expand

the scope and volume of its activities with the help of additional assistance from the Fund. In the case of an Applicant that previously received funding under the CDFI Program, the Fund reserves the right to consider the extent to which the Applicant timely delivered its required reports to the Fund.

Notwithstanding these changes to § 1805.701(b) of this interim rule, the Fund reserves the right per § 1805.701(b)(10) of this interim rule to consider other evaluation factors in evaluating applications. The Fund anticipates that it will publish such other evaluation factors in the applicable NOFA and/or the applicable application packet.

Data Collection and Reporting

Section 1805.903(b) of the current rule requires Awardees to compile user profile information to assist the Fund in determining whether the Awardee's Target Market is adequately served. Section 1805.803(b) of this interim rule adds a provision that the Awardee's compilation of user profile information will assist the Fund in evaluating the impact of the CDFI Program. Specifically, the Fund will request that the Awardee report user profile information as part of the reporting requirement that will assist the Fund in evaluating the impact of the CDFI Program. This impact reporting requirement is contained in § 1805.903(c) of the current rule (§§ 1805.803(c) and 1805.803(e)(5) of this interim rule), and has been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505-0154.

Section 1805.903(e)(2) of the current rule requires each Awardee to submit a quarterly report with information on the performance of its loans, Development Investments, Development Services, and Financial Services, unaudited financial statements, and information on portfolio performance. The Fund believes that these quarterly reporting requirements are unduly burdensome, and has decided to reduce the frequency of such reporting. In addition, the Fund has decided to narrow the scope of such reports. Specifically, § 1805.803(e)(2) of this interim rule requires each Awardee to submit a semi-annual report (i.e., two per year) consisting of its internal (unaudited) financial statements and information on compliance with its financial soundness covenants. The Fund is adding to the semi-annual report a requirement that the Awardee report on its compliance with its financial soundness covenants. This

requirement is similar to an existing requirement contained in each Assistance Agreement and does not impose any additional burdens on Awardees. Awardees will still be required to report on the performance of their Financial Products, Development Services, Financial Services, and portfolio performance; however, such reporting requirements will be added to the impact reporting requirement described in § 1805.803(c) of this interim rule.

Section 1805.903(e)(3) of the current rule requires each Awardee to submit an annual report consisting of: (1) information on the Awardee's customer profile and the performance of its products and services; (2) information on its portfolio performance; (3) qualitative and quantitative information on the Awardee's performance goals; (4) information describing the manner in which Fund assistance and any corresponding matching funds were used; (5) certification that the Awardee continues to meet the eligibility requirements described in § 1805.200; and (6) its most recent audited financial statements prepared by an independent certified public accountant. The Fund has decided to remove several of the reporting requirements from the annual report and add them to the impact reporting requirement. In addition, the Fund is adding to the annual report a requirement that the Awardee provide a narrative description of the Awardee's activities in support of its Comprehensive Business Plan. This requirement is similar to an existing requirement contained in each Assistance Agreement, and does not impose any additional reporting burdens on Awardees. As a result, § 1805.803(e)(3) of this interim rule requires each Awardee to submit an annual report consisting of: (1) a narrative description of an Awardee's activities in support of its Comprehensive Business Plan; (2) qualitative and quantitative information on an Awardee's compliance with its performance goals; (3) information describing the manner in which Fund assistance and any corresponding matching funds were used; and (4) certification that the Awardee continues to meet the eligibility requirements described in § 1805.200.

In addition, the Fund has decided to bifurcate the due dates for submission of the audited statements of financial condition and the other reporting requirements contained in the annual report. The Fund understands that a longer period of time is required for an Awardee's independent certified public accountant to conduct and complete an

audit of the Awardee than is required for an Awardee to prepare and submit to the Fund the other reporting requirements contained in the annual report. As a result, § 1805.803(e)(4) of this interim rule generally affords an Awardee 120 days after the end of its fiscal year to submit its audited financial statements to the Fund, as opposed to § 1805.803(e)(3) of this interim rule which generally affords an Awardee 60 days to submit its annual report to the Fund.

III. Rulemaking Analysis

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505-0154. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

National Environmental Policy Act

Pursuant to Treasury Directive 75-02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant

to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

Catalog of Federal Domestic Assistance Number

Community Development Financial Institutions Program—21.020.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

Sec.

- 1805.100 Purpose.
- 1805.101 Summary.
- 1805.102 Relationship to other Fund programs.
- 1805.103 Awardee not instrumentality.
- 1805.104 Definitions.
- 1805.105 Waiver authority.
- 1805.106 OMB control number.

Subpart B—Eligibility

- 1805.200 Applicant eligibility.
- 1805.201 Certification as a Community Development Financial Institution.

Subpart C—Use of Funds/Eligible Activities

- 1805.300 Purposes of financial assistance.
- 1805.301 Eligible activities.
- 1805.302 Restrictions on use of assistance.
- 1805.303 Technical assistance.

Subpart D—Investment Instruments

- 1805.400 Investment instruments—general.
- 1805.401 Forms of investment instruments.
- 1805.402 Assistance limits.
- 1805.403 Authority to sell.

Subpart E—Matching Funds Requirements

- 1805.500 Matching funds—general.
- 1805.501 Comparability of form and value.
- 1805.502 Severe constraints waiver.
- 1805.503 Time frame for raising match.
- 1805.504 Retained earnings.

Subpart F—Applications for Assistance

- 1805.600 Notice of Funds Availability.
- 1805.601 Application contents.

Subpart G—Evaluation and Selection of Applications

- 1805.700 Evaluation and selection—general.
- 1805.701 Evaluation of Applications.

Subpart H—Terms and Conditions of Assistance

- 1805.800 Safety and soundness.
- 1805.801 Assistance Agreement; sanctions.
- 1805.802 Disbursement of funds.
- 1805.803 Data collection and reporting.
- 1805.804 Information.
- 1805.805 Compliance with government requirements.
- 1805.806 Conflict of interest requirements.
- 1805.807 Lobbying restrictions.
- 1805.808 Criminal provisions.
- 1805.809 Fund deemed not to control.
- 1805.810 Limitation on liability.
- 1805.811 Fraud, waste and abuse.

Authority: 12 U.S.C. 4703, 4703 note, 4717; and 31 U.S.C. 321.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a competitive application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.*

(1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

- (i) An application pending for assistance under the Community Development Financial Institutions Program;
- (ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a Bank Enterprise Award Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

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

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

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

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

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

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

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

(h) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that

meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(i) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

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

(k) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(l) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(m) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(n) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, Equity Investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(o) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described under § 1805.601(d);

(p) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(q) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products of the Applicant. Such services include, for example: financial or credit counseling to individuals for the

purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Equity Investment* means an investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), or any other investment deemed to be an Equity Investment by the Fund;

(s) *Financial Products* means loans, Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs;

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

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

(v) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(w) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(x) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination

with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

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

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

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

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

(cc) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and
(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(dd) *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;

(ee) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(ff) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(gg) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(b)(4);

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

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

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law

upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0154.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section.

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

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates

collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in paragraph (b) of this section. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b), or § 1805.200(a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) and § 1805.200 by providing the information requested in paragraphs (b)(1) through (b)(7) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and

persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

(2) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(ii) An Applicant described under:

(A) Paragraph (b)(2)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(2)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(2)(i)(C) of this section shall submit a copy of its most recent year-end financial statements (and any notes or other supplemental information to its financial statements) documenting its assets dedicated to Financial Products, Development Services and/or other similar financing, and an explanation of how such assets support these activities. An Applicant also shall provide qualitative and quantitative information on the percentage of Applicant staff time dedicated to the provision of Financial Products, Development Services, and/or other similar financing.

(3) *Target Market.* (i) *General.* An Applicant shall provide a description of one or more Investment Areas and/or Targeted Populations that it serves, and shall demonstrate that its total activities are principally directed to serving the Investment Areas, Targeted Populations, or both. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) of this section.

(ii) *Investment Area.* (A) *General.* A geographic area will be considered

eligible for designation as an Investment Area if it:

(1) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands); and either

(2) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans or Equity Investments as described in paragraph (b)(3)(ii)(E) of this section; or

(3) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under § 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (b)(3)(ii)(B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

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

(4) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(5) In areas located outside of a Metropolitan Area:

(i) The county population loss in the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(ii) The county net migration loss (outmigration minus immigration) over the five year period preceding the most recent decennial census is at least 5 percent.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans or Equity Investments within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents. To demonstrate that it is serving an Investment Area, an Applicant shall submit:

(1) A completed Investment Area Designation worksheet referenced in the application packet;

(2) A map of the designated area(s); and

(3) Studies or other analyses as described in paragraph (b)(3)(ii)(E) of this section.

(iii) *Targeted Population.* (A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to loans or Equity Investments in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust

Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members. To demonstrate that it is serving a Targeted Population, an Applicant shall submit:

(1) In the case of a Low-Income Targeted Population, a description of the service area from which the Low-Income Targeted Population is drawn (which could be, for example, a local, regional or national service area); or

(2) In the case of a Targeted Population defined other than on the basis of Low-Income—

(i) A description of the service area from which the Targeted Population is drawn;

(ii) Studies, analyses or other information demonstrating that the identifiable group of individuals, either on a national basis or on a localized basis in the Applicant's service area, lacks adequate access to loans or Equity Investments; and

(iii) Studies, analyses or other information demonstrating that the Applicant's clients, who comprise the identifiable group of individuals, lack adequate access to loans or Equity Investments.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products. An Applicant shall submit a description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise. An Applicant shall describe how it has and will maintain accountability to the residents of the Investment Area(s) or Targeted Population(s) it serves.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. An Applicant shall submit copies of its articles of incorporation (or comparable organizing documents), charter, bylaws, or other legal

documentation or opinions sufficient to verify that it is not a government entity.

(7) *Ownership.* An Applicant shall submit information indicating the portion of shares of all classes of voting stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

Subpart C—Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

§ 1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the

Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.303 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.601.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the competitive review criteria in subpart G of this part, except as otherwise may be provided in the applicable NOFA. In addition, the requirements for matching funds are not applicable to technical assistance requests.

Subpart D—Investment Instruments

§ 1805.400 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will provide financial assistance to an

Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.402 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than \$5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of \$3.75 million during the same three-year period. Such additional assistance:

- (1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and
- (2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the

requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

§ 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart E—Matching Funds Requirements

§ 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

§ 1805.501 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a

manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.502 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

- (1) Reducing such requirements by up to 50 percent; or
- (2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:
 - (i) Has total assets of less than \$100,000;
 - (ii) Serves an area that is not a Metropolitan Area; and
 - (iii) Is not requesting more than \$25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a “severe constraints waiver” as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

- (1) The cause and extent of the constraints on raising matching funds;
- (2) Efforts to date, results, and projections for raising matching funds;
- (3) A description of the matching funds expected to be raised; and
- (4) Any additional information requested by the Fund.

(d) The Fund will grant a “severe constraints waiver” only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.503 Time frame for raising match.

Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

§ 1805.504 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (e.g., retained earnings at the end of fiscal year 1999 less retained earnings at the end of fiscal year 1998); or

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

(2) Such retained earnings may be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than a Credit Union), retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

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

(2) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an insured credit union Applicant, retained earnings that may be used for matching funds purposes shall consist of:

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

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

(iii) The entire retained earnings that has been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, retained earnings shall be comprised of "Regular Reserves", "Other Reserves" (excluding reserves specifically dedicated for losses), and "Undivided Earnings" as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is at least equal to four times the amount of retained earnings that is committed as matching funds; and

(B) Such increase be achieved within 24 months from September 30 of the calendar year in which the applicable application deadline falls;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares;

(iii) The level from which the increases in shares described in paragraph (d)(4)(i) of this section will be measured will be as of September 30 of the calendar year in which the applicable application deadline falls; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

Subpart F—Applications for Assistance

§ 1805.600 Notice of Funds Availability.

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

§ 1805.601 Application contents.

An Applicant shall provide information necessary to establish that it

is, or will be, a CDFI. Unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet including the items specified in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(1) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in § 1805.201(b)(1) and (2) and paragraphs (d)(2) and (d)(9)(v) of this section) and financial statements (as described in paragraph (d)(4) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in § 1805.201(b)(1) and (2) and paragraphs (d)(2) and (d)(9)(vi) of this section) and financial statements (as described in paragraph (d)(4) of this section) for each full fiscal year since its inception; or

(3) For less than one year, shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan shall demonstrate that the Applicant shall have the capacity to operate as a CDFI upon receiving financial assistance from the Fund pursuant to this part.

(1) *Executive summary.* The executive summary shall include a description of the institution, products and services, markets served or to be served, accomplishments to date and key points of the Applicant's five year strategy, and other pertinent information.

(2) *Community development track record.* The Applicant shall describe its

community development impact over the past three years, or for its period of operation if less than three years. In addition, an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall describe its activities, operations and community benefits created for residents of the Investment Area(s) or Targeted Population(s) for such periods as described in paragraph (c) of this section.

(3) *Operational capacity and risk mitigation strategies.* An Applicant shall submit information on its policies and procedures for underwriting and approving loans and investments, monitoring its portfolio and internal controls and operations. An Applicant shall also submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.806.

(4) *Financial track record and strength.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. An Applicant shall submit:

- (i) Audited financial statements;
- (ii) Financial statements that have been reviewed by a certified public accountant; or
- (iii) Financial statements that have been reviewed by the Applicant's Appropriate Federal Banking Agency. Such statements should include balance sheets or statements of financial position, income and expense statements or statements of activities, and cash flow statements. The Applicant shall also provide information necessary to assess trends in financial and operating performance.

(5) *Capacity, skills and experience of the management team.* An Applicant shall provide information on the background and capacity of its management team, including key personnel and governing board members. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(6) *Market analysis.* An Applicant shall provide an analysis of its Target Market, including a description of the Target Market, and the extent of economic distress, an analysis of the needs of the Target Market for Financial Products, Financial Services and Development Services, and an analysis of the extent of demand within such Target Market for the Applicant's products and services. The Applicant also shall provide an assessment of any factors or trends that may affect the Applicant's ability to deliver its

products and services within its Target Market.

(7) *Program design and implementation plan.* An Applicant shall:

- (i) Describe the products and services it proposes to provide and analyze the competitiveness of such products and services in the Target Market;
- (ii) Describe its strategy for delivering its products and services to its Target Market;
- (iii) Describe how its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s);
- (iv) Describe its plan to coordinate use of assistance from the Fund with existing government assistance programs and private sector resources;
- (v) Describe how it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide Equity Investments, loans, secondary markets, or other services in the Target Market; and
- (vi) Discuss the extent of community support (if any) within the Target Market for its activities.

(8) *Financial projections and resources.* An Applicant shall provide:

- (i) *Financial projections.* (A) Projections for each of the next five years which include pro forma balance sheets or statements of financial position, income and expense statements or statements of activities, and a description of any assumptions that underlie its projections; and
- (B) Information to demonstrate that it has a plan for achieving or maintaining sustainability within the five-year period;
- (ii) *Matching funds.* (A) A detailed description of its plans for raising matching funds, including funds previously obtained or legally committed to match the amount of financial assistance requested from the Fund; and

(B) An indication of the extent to which such matching funds will be derived from private, nongovernment sources. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, if applicable, the extent to which, and for what purpose, such matching funds have been used to date, and terms and restrictions on use for each matching source, including any restriction that might reasonably be construed as a limitation on the ability of the Applicant to use the funds for matching purposes; and

(iii) *Severe constraints waiver.* If the Applicant is requesting a "severe constraints waiver" of any matching requirements, it shall submit the information requested in § 1805.502.

(9) *Projected community impact.* An Applicant shall provide:

- (i) Estimates of the volume of new activity to be achieved within its Target Market assuming that assistance is provided by the Fund;
- (ii) A description of the anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds within the Target Market;
- (iii) An estimate of the benefits expected to be created within its Target Market over the next five years;
- (iv) The extent to which the Applicant will concentrate its activities within its Target Market;
- (v) A description of how the Applicant will measure the benefits created as a result of its activities within its Target Market; and
- (vi) In the case of an Applicant with a prior history of serving a Target Market, an explanation of how the Applicant will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an application with a Community Partner, the Applicant shall:

- (i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);
- (ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;
- (iii) Provide information necessary to evaluate such an application as described under § 1805.701(b)(6);
- (iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart G of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(13) *Effective use of Fund resources.* An Applicant shall describe the extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan.

(e) *Community ownership and governance.* An Applicant shall provide information to demonstrate the extent to which the Applicant is, or will be, Community-Owned or Community-Governed.

(f) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(g) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.807; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

Subpart G—Evaluation and Selection of Applications

§ 1805.700 Evaluation and selection—general.

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

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

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its

Comprehensive Business Plan and achieve community development impact; and

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

§ 1805.701 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (e.g., in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Solid understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Quality program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in

carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan. In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities;

(10) The Fund may consider any other factors, as it deems appropriate, in reviewing an application.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

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

Subpart H—Terms and Conditions of Assistance

§ 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.801 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardees application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

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

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

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

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

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

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

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

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

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

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

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

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

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

§ 1805.802 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursement of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.803 Data collection and reporting.

(a) *Data—General.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

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

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or

members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable).

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement.

(2) An Awardee shall submit within 60 days after the end of each semi-annual period, or within some other period as may be agreed to in the Assistance Agreement, internal financial statements covering the semi-annual reporting period (i.e., two periods per year) and information on its compliance with its financial soundness covenants.

(3) An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

(i) A narrative description of an Awardee's activities in support of its Comprehensive Business Plan;

(ii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such

information to verify that assistance was used in a manner consistent with the Assistance Agreement; and certification that an Awardee continues to meet the eligibility requirements described in § 1805.200.

(4) An Awardee shall submit within 120 days after the end of its fiscal year, or within some other period as may be agreed to in the Assistance Agreement, fiscal year end statements of financial condition audited by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Offices Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), as applicable.

(5) An Awardee shall submit a report within 120 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following information:

(i) The Awardee's customer profile;

(ii) Awardee activities including Financial Products and Development Services;

(iii) Awardee portfolio quality;

(iv) The Awardee's financial condition; and

(v) The Awardee's community development impact.

(6) The Fund shall make reports described in paragraphs (e)(2) and (e)(3) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.*

(1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose

the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f) (1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institutions implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of a Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

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

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (<http://www.whitehouse.gov/OMB/grants/index.html>); and

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

§ 1805.804 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.805 Compliance with government requirements.

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

§ 1805.806 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.807 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or

modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.808 Criminal provisions.

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

§ 1805.809 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.810 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.811 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: October 25, 1999.

Maurice A. Jones,

*Deputy Director for Policy and Programs,
Community Development Financial
Institutions Fund.*

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