

(c) *Contents of notice.* A notice of intent to issue an order under this subpart shall include:

(1) A statement of the Enterprise's capital classification and its minimum capital level or critical capital level, and its risk-based capital level;

(2) A description of the restrictions, prohibitions, or affirmative actions that OFHEO proposes to impose or require; and

(3) The proposed date when such restrictions or prohibitions would become effective or the proposed date for the commencement and/or completion of the affirmative actions.

§ 1777.25 Response to notice.

(a) *Content of response.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in connection with the proposed order. The response should include, but is in no way limited to, the following:

(1) Any relevant information, mitigating circumstances, documentation, or other information the Enterprise wishes OFHEO to consider in support of the Enterprise's position regarding the proposed order; and

(2) Any recommended modification to the proposed order, and justification thereof.

(b) *Time to respond.* The Enterprise may, within thirty calendar days after receipt of the notice of proposed order, submit a response to OFHEO, unless OFHEO determines a shorter period to be appropriate or the Enterprise consents to a shorter period. OFHEO may extend the Enterprise's response period for up to an additional thirty calendar days if OFHEO determines, in its discretion, that there is good cause for such extension.

(c) *Waiver and consent.* The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed order.

§ 1777.26 Final notice of order.

(a) *Determination and notice.* After the Enterprise has submitted its response under § 1777.25 or the response period (as extended or shortened, if applicable) has expired, whichever occurs first,

OFHEO will determine, in its discretion, whether to take into consideration such relevant information as is provided by the Enterprise in its response, if any, under § 1777.25. OFHEO will provide the Enterprise with a written final notice of any order issued by OFHEO under this subpart, which is to include a description of the basis for OFHEO's determination.

(b) *Termination or modification.* An Enterprise that has received an order under paragraph (a) of this section remains subject to each provision of the order until each such provision terminates under the express terms of the order. The Enterprise may submit a written request to OFHEO seeking modification or termination of one or more provisions of the order. Pending OFHEO's review and approval, in OFHEO's discretion of the Enterprise's request, the Enterprise shall remain subject to the provisions of the order.

(c) *Enforcement of order*—(1) *Judicial enforcement.* An order issued under paragraph (a) of this section is an order for purposes of section 1375 of the 1992 Act (12 U.S.C. 4635). An Enterprise in any capital classification may be subject to enforcement of such order in the United States District Court for the District of Columbia pursuant to such section.

(2) *Administrative enforcement.* An order issued under paragraph (a) of this section constitutes an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such order.

§ 1777.27 Exhaustion and review.

(a) *Judicial review*—(1) *Review of certain actions.* An Enterprise that is not classified as critically undercapitalized may seek judicial review of a final notice of capital classification issued pursuant to § 1777.21(a)(3) or a final notice of order issued pursuant to § 1777.26(a) in accordance with section 1369D of the 1992 Act (12 U.S.C. 4623)

(2) *Other review barred.* Except as set out in paragraph (a)(1) of this section,

§ 1777.28

or review of conservatorship appointments to the limited extent provided in section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)) and §1777.28(c), no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of a capital classification or any other action of OFHEO pursuant to this subpart B, as provided in section 1369D of the 1992 Act (12 U.S.C. 4623).

(b) *Exhaustion of administrative remedies.* In connection with any issue for which an Enterprise seeks judicial review in connection with an action described in paragraph (a)(1) of this section, the Enterprise must have first exhausted its administrative remedies, by presenting all its objections, arguments, and information relating to such issue for OFHEO's consideration pursuant to §1777.21(a)(2), as part of the Enterprise's response to OFHEO's notice of capital classification, or pursuant to §1777.25, as part of the Enterprise's response to OFHEO's notice of intent to issue an order.

(c) *No stay pending review.* The commencement of proceedings for judicial review of a final capital classification or order as described in paragraph (a)(1) of this section shall not operate as a stay thereof.

§ 1777.28 Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

(a) *Significantly undercapitalized Enterprise.* At any time after an Enterprise is classified as significantly undercapitalized, OFHEO may issue an order appointing a conservator for the Enterprise upon determining that:

(1) The amount of core capital of the Enterprise is less than the minimum capital level; and

(2) The alternative remedies available to OFHEO under the 1992 Act are not satisfactory.

(b) *Critically undercapitalized Enterprise—(1) Appointment upon classification.* Not later than thirty days after

12 CFR Ch. XVII (1–1–16 Edition)

issuing a final notice of capital classification pursuant to §1777.21(a)(3) classifying an Enterprise as significantly undercapitalized, OFHEO shall issue an order appointing a conservator for the Enterprise.

(2) *Exception.* Notwithstanding paragraph (b)(1) of this section, OFHEO may determine not to appoint a conservator if OFHEO makes a written finding, with the written concurrence of the Secretary of the Treasury, that:

(i) The appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

(ii) The public interest would be better served by taking some other enforcement action authorized under this title.

(c) *Judicial review.* An Enterprise for which a conservator has been appointed pursuant to paragraph (a) or (b) of this section may seek judicial review of the appointment in accordance with section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)). Except as provided therein, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of the powers or functions of a conservator.

(d) *Termination—(1) Upon reaching the minimum capital level.* OFHEO will issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level.

(2) *In OFHEO's discretion.* OFHEO may, in its discretion, issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that such termination order is in the public interest and may safely be accomplished.

PARTS 1778–1799 [RESERVED]

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

<i>Part</i>	<i>Page</i>
1800–1804[Reserved]	
1805 Community Development Financial Institutions Program	689
1806 Bank Enterprise Award Program	707
1807 Capital magnet fund	718
1808 Community Development Financial Institutions Bond Guarantee Program	732
1815 Environmental quality	763
1816–1899[Reserved]	

PARTS 1800–1804 [RESERVED]

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Sec.

Subpart A—General Provisions

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

Subpart B—Eligibility

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

Subpart C—Use of Funds/Eligible Activities

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

Subpart D—Investment Instruments

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

Subpart E—Matching Funds Requirements

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

Subpart F—Applications for Assistance

- 1805.600 Notice of Funds Availability.

Subpart G—Evaluation and Selection of Applications

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

Subpart H—Terms and Conditions of Assistance

- 1805.800 Safety and soundness.
- 1805.801 Assistance Agreement; sanctions.
- 1805.802 Payment 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 CDFI Fund deemed not to control.
- 1805.810 Limitation on liability.
- 1805.811 Fraud, waste and abuse.

AUTHORITY: 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

SOURCE: 80 FR 52382, Aug. 31, 2015, unless otherwise noted.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions (CDFI) Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

§ 1805.101 Summary.

Through the Community Development Financial Institutions Program, the CDFI Fund provides financial and technical assistance to Recipients selected by the CDFI Fund in order to enhance their ability to provide Financial Products, Financial Services and Development Services to and in their Target Markets. Each Recipient must serve an Investment Area(s), a Targeted Population(s), or both. The CDFI Fund will select Recipients to receive financial or technical assistance through a merit-based, qualitative application process. Each Recipient must enter into an Assistance Agreement that requires it to achieve specific performance goals and abide by other terms and conditions pertinent to any assistance received under this part, as well as the Uniform Requirements, as applicable. All CDFI Program awards shall be made subject to funding availability.

§ 1805.102 Relationship to other CDFI Fund programs.

Restrictions on applying for, receiving, and using CDFI Program awards in conjunction with awards under other programs administered by the CDFI Fund (including, but not limited to, the Bank Enterprise Award Program, the Capital Magnet Fund, the CDFI

§ 1805.103

12 CFR Ch. XVIII (1–1–16 Edition)

Bond Guarantee Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit Program) are as set forth in the applicable Notice of Funds Availability, Notice of Guarantee Availability, or Notice of Allocation Availability.

§ 1805.103 Recipient not instrumentality.

No Recipient (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, the following terms shall have the following definitions:

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

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

Applicant means any entity submitting an application for CDFI Program assistance or funding under this part;

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

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

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

Community Development Financial Institution (or *CDFI*) means an entity currently meeting the requirements described in §1805.201;

Community Development Financial Institutions Fund (or *CDFI Fund*) means the Community Development Financial Institutions Fund established pursuant to section 104(a) (12 U.S.C. 4703(a)) of the Act;

Community Development Financial Institution Intermediary (or *CDFI Inter-*

mediary) 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;

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;

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

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;

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

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 or a Recipient. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a State-Insured Credit Union, a non-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 se.*);

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

Comprehensive Business Plan means a document, covering not less than the next five years, that demonstrates that the Applicant will be properly managed and will have the capacity to operate as a CDFI that will not be dependent upon assistance from the CDFI Fund for continued viability, and that meets the requirements described in an applicable Notice of Funds Availability;

Control or Controlling means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or

(3) Power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

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

Development Services means activities undertaken by a CDFI, its Affiliate or contractor that promote community development and shall prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services. For example, such activities include, financial or credit counseling; homeownership counseling; and business planning and management assistance;

Equity Investment means an investment made by a CDFI that, in the judgment of the CDFI Fund, supports or enhances activities serving the CDFI's 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 CDFI as an Affiliate. Equity Investments may comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the CDFI Fund); a purchase of secondary capital, or any other investment deemed by the CDFI Fund to be an Equity Investment;

Financial Products means loans, Equity Investments and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, Financial

Products may also include loans to CDFIs and/or emerging CDFIs and deposits in Insured Credit Union CDFIs, emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs;

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

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 or established 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;

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 se.*). Each such Indian Tribe must be recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

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, Subsidiary, Affiliate, or Community Partner;

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

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

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

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

§ 1805.105

12 CFR Ch. XVIII (1–1–16 Edition)

Low-Income means 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;

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;

Non-Regulated CDFI means any entity meeting the eligibility requirements described in §1805.200 and that is not a Depository Institution Holding Company, Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union;

Nonvoting Securities or Nonvoting Shares. Preferred shares, limited partnership shares or interests, or similar interests are Nonvoting Securities if:

- (1) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preferences of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

- (2) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

- (3) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

Recipient means an Applicant selected by the CDFI Fund to receive assistance pursuant to this part;

State means any State of the United States, the District of Columbia or any

territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands;

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

Subsidiary means any company that is owned or Controlled directly or indirectly by another company 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);

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

Target Market means an Investment Area(s) and/or a Targeted Population(s);

Uniform Requirements means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury’s codification of the Office of Management and Budget (OMB) government-wide framework for grants management at 2 CFR part 200;

Voting Securities means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

- (1) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or
- (2) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

§ 1805.105 Uniform Requirements; Waiver authority.

(a) *Uniform Requirements.* The Uniform Requirements will be applied to all awards made pursuant to this part, as applicable.

(b) *Waiver authority.* The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and

the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the FEDERAL REGISTER.

§ 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 applicable, approved OMB Control Numbers associated with the CDFI Fund under 1559.

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)(i) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the CDFI Fund:

(A) Receives a complete application for certification from the entity within the time period set forth in an applicable Notice of Funds Availability; and

(B) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within the period set forth in an applicable Notice of Funds Availability.

(ii) The CDFI Fund will not, however, make a payment of any financial assistance to such an entity before or unless it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(i)(B) of this section, the CDFI Fund reserves the right to require an entity to have been certified as described in § 1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable Notice of Funds Availability.

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

(4) The CDFI Fund, in its sole discretion, shall determine whether an entity 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) through (3) of this section, an entity 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 entity's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the entity.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the CDFI Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the CDFI Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the CDFI Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the CDFI Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the CDFI Fund. The CDFI 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 or §1805.200(b) are no longer met.

(b) *Eligibility verification.* An entity shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) by providing the information described in the application for certification demonstrating that the entity meets the eligibility requirements described in paragraphs (b)(1) through (6) of this section. The CDFI Fund, in its sole discretion, shall determine whether an entity has satisfied the requirements of this paragraph.

(1) *Primary mission.* A CDFI must have a primary mission of promoting community development. In determining whether an entity has such a primary mission, the CDFI Fund will consider whether the activities of the entity are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons or persons who lack adequate access to capital and/or Financial Services) and/or residents of economically distressed communities (which may include Investment Areas).

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

(A) Depository Institution Holding Company;

(B) Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union; or

(C) Organization that is deemed by the CDFI 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 certification application. In conducting such analysis, the CDFI Fund may take into consideration an entity's total assets and its use of personnel.

(ii) For the sole purpose of participating as an Eligible CDFI in the CDFI Bond Guarantee Program (see 12

CFR1808), an Affiliate of a Controlling CDFI may be deemed to meet the financing entity requirement of this section by relying on the CDFI Fund's determination that the Controlling CDFI has met said requirement; provided, however, that the CDFI Fund reserves the right, in its sole discretion, to set additional parameters and restrictions on such, which parameters and restrictions shall be set forth in the applicable Notice of Guarantee Availability for a CDFI Bond Guarantee Program application round.

(iii) Further, for the sole purpose of participating as an Eligible CDFI in the CDFI Bond Guarantee Program, the provision of Financial Products, Development Services, and/or other similar financing by an Affiliate of a Controlling CDFI need not be arms-length if such transaction is by and between the Affiliate and the Controlling CDFI, pursuant to an operating agreement that includes management and ownership provisions and is in form and substance acceptable to the CDFI Fund.

(3) *Target Market*—(i) *General.* A CDFI must serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An entity may demonstrate that it meets this requirement by demonstrating that it provides Financial Products and/or Financial Services in an Investment Area and/or Targeted Populations as described in this section. 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 Virgin Islands, and the Northern Mariana Islands); and either

(2) Meets at least one of the objective criteria of economic distress as set

forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, Financial Products or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or

(3) Encompasses (*i.e.*, wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (B), an Investment Area shall consist of a geographic unit that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, or Indian Reservation. However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, and Indian Reservations. An entity may designate one or more Investment Areas as part of a single certification application.

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

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

(2) A group of contiguous geographic units that 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 na-

tional Metropolitan Area median family income, whichever is greater; or

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

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

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

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

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the entity demonstrates a pattern of unmet needs for Financial Products or Financial Services within such area.

(F) *Serving Investment Areas.* An entity may serve an Investment Area directly or through borrowers or investees that serve the Investment Area.

(iii) *Targeted Population—(A) General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to Financial Products or Financial Services in the entity's Target Market. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving Targeted Populations.* An entity may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve such members.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, must

§ 1805.300

12 CFR Ch. XVIII (1–1–16 Edition)

have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. An entity applying for CDFI certification must demonstrate that it meets this requirement.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board and/or advisory board(s). An entity applying for CDFI certification must demonstrate that it meets this requirement.

(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 applying for CDFI certification must demonstrate that it meets this requirement. 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.

(c) *Records and Review.* The CDFI Fund will review a CDFI's certification status from time to time, as deemed appropriate by the CDFI Fund, to ensure that it meets the certification requirements of this section, as well as review its organizational capacity, lending activity, community impacts, and such other information that the CDFI Fund deems appropriate. Upon request, a CDFI shall provide such information and documentation to the CDFI Fund as is necessary to undertake such review.

Subpart C—Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

The CDFI Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to increase available capital and enhance the ability of a Recipient to provide Financial Products, Financial Services, and Development Services.

§ 1805.301 Eligible activities.

Recipients may use financial assistance provided under this part to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

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

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

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

(3) Increase 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 homeownership 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 CDFI Fund.

§ 1805.302 Restrictions on use of assistance.

(a) A Recipient shall use assistance provided by the CDFI Fund and its corresponding matching funds only for the eligible activities approved by the CDFI Fund and described in the Assistance Agreement.

(b) A Recipient may not distribute assistance to an Affiliate without the CDFI Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Recipient 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 CDFI 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 CDFI Fund. The CDFI 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 or Recipient. The CDFI Fund may not provide any technical assistance funding to an Applicant for the purpose of assisting in the preparation of an application for federal assistance. The CDFI Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

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

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.600.

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

Subpart D—Investment Instruments

§ 1805.400 Investment instruments—general.

The CDFI Fund will provide financial assistance to a Recipient 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 CDFI 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 CDFI Fund may make non-voting equity investments in a Recipient, including, without limitation, the purchase of non-voting stock. Such stock shall be transferable and, in the discretion of the CDFI Fund, may provide for convertibility to voting stock upon transfer. The CDFI Fund shall not own more than 50 percent of the equity of a Recipient and shall not control its operations.

(b) *Grants.* The CDFI Fund may award grants.

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

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

§ 1805.402 Assistance limits.

(a) *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 a Recipient and its Subsidiaries and Affiliates during any three-year period.

(b) *Additional amounts.* If a Recipient proposes to establish a new Subsidiary or 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 Recipient or its Subsidiaries or Affiliates, the Recipient 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

§ 1805.403

(2) Must be distributed to a new Subsidiary or Affiliate that meets the eligibility requirements described in §1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) A Recipient 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 CDFI Fund prior to the receipt of the application of said Recipient and within the current funding round.

§ 1805.403 Authority to sell.

The CDFI Fund may, at any time, sell its equity investments and loans, provided the CDFI 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 CDFI 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 applicable Notice of Funds Availability and/or the corresponding Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided they were used as provided in the appli-

12 CFR Ch. XVIII (1–1–16 Edition)

cable Notice of Funds Availability and/or Assistance Agreement.

§ 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 CDFI Fund (except as provided in §1805.502). The CDFI 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 a Recipient that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the CDFI Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) A Recipient 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 CDFI 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 CDFI 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.

(c) The terms of the severe constraints waiver shall be provided in the applicable Notice of Funds Availability and Assistance Agreement.

§ 1805.503 Time frame for raising match.

Applicants and Recipients shall satisfy matching funds requirements within the period set forth in the applicable Notice of Funds Availability and/or the corresponding Assistance Agreement.

§ 1805.504 Retained earnings.

(a) *General.* An Applicant or Recipient may use its retained earnings to match a request for a financial assistance grant from the CDFI Fund. An Applicant or Recipient that proposes to meet all or a portion of its matching funds requirements by committing available retained earnings from its operations shall be subject to the restrictions described in this section. Retained earnings shall be calculated as directed by the CDFI Fund in the applicable Notice of Funds Availability, the financial assistance application, and/or related guidance materials. The CDFI Fund shall make the final determination of the eligible amount of retained earnings that an Applicant or Recipient has available as matching funds.

(b) *Applicants other than Insured Credit Unions, State-Insured Credit Unions and Insured Depository Institutions.* In the case of an Applicant or Recipient that is not an Insured Credit Union, State-Insured Credit Union or Insured Depository Institution, retained earnings that may be used for matching funds purposes shall consist of:

(1) The increase in retained earnings (meaning, for purposes of §1805.504(b), revenue minus expenses less any dividend payments) that has occurred over the Applicant's or Recipient's fiscal year as set forth in the applicable Notice of Funds Availability; or

(2) The annual average of such increases that occurred over the Applicant's or Recipient's three consecutive fiscal years as set forth in the applicable Notice of Funds Availability.

(c) *Insured Credit Unions, State-Insured Credit Unions, and Insured Depository Institutions.* (1) In the case of an Applicant or Recipient that is an Insured Credit Union, State-Insured Credit Union or Insured Depository Institution, 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 or Recipient's fiscal year as set forth in the applicable Notice of Funds Availability;

(ii) The annual average of such increases that has occurred over the Applicant's or Recipient's three consecutive fiscal years as set forth in the applicable Notice of Funds Availability; or

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

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

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

(C) The level from which the achievement of said increases will be measured will be as of the date set forth in the applicable Notice of Funds Availability; and

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

(2) The CDFI Fund will allow an Applicant or Recipient to utilize the option described in paragraph (c)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant or Recipient will have a high probability of success in achieving said increases to the specified amounts.

Subpart F—Applications for Assistance**§ 1805.600 Notice of Funds Availability.**

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the applicable Notice of Funds Availability published in the FEDERAL REGISTER. The Notice of Funds Availability will advise prospective Applicants on how to obtain an application packet and will establish deadlines and other requirements. The Notice of

Funds Availability may specify the application scoring criteria and any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the CDFI Fund may request clarifying or technical information on the materials submitted as part of such application.

Subpart G—Evaluation and Selection of Applications

§ 1805.700 Evaluation and selection—general.

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

- (a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;
- (b) Consider 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 Recipient can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact;
- (d) Ensure that Recipients represent a geographically diverse group of Recipients serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States; and
- (e) Consider other factors as described in the applicable Notice of Funds Availability.

§ 1805.701 Evaluation of applications.

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

ate the feasibility of the Applicant's Comprehensive Business Plan goals, the likelihood of the Applicant meeting such goals, and the likelihood of the Applicant achieving its proposed community development impacts, by considering factors such as:

- (1) Community development track record, including, in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market and whether it will expand its operations into a new Investment Area or serve a new Targeted Population, offer more Development Services, Financial Products and/or Financial Services, or increase the volume of its current business;
- (2) Operational capacity and risk mitigation strategies;
- (3) Financial track record and strength;
- (4) Capacity, skills, experience and background of the management team;
- (5) Understanding of its market context, including an analysis of the needs of the Investment Area or Targeted Population and a strategy for how the Applicant will attempt to meet those needs; such analysis of current and prospective customers will include 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 Loans, Equity Investments, Financial Products, Financial Services and Development Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;
- (6) Program design and implementation plan, including: A plan to coordinate use of a financial assistance award with existing Federal State, local and Tribal government assistance programs, and private sector financial services; A description of how the Applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to the Investment Area or Targeted Population; 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 CDFI 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 the raising of needed external resources, including a detailed description of the Applicant's plans and likely sources of funds to match the amount of financial assistance requested from the CDFI Fund, the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI or a State-Insured Credit Union;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan are consistent with existing economic, community, and housing development plans adopted by or applicable to the Investment Area or Targeted Population and will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the CDFI 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 CDFI Fund's assistance to carry out its Comprehensive Business Plan;

(10) In the case of an Applicant that has previously received assistance under the CDFI Program, the CDFI 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 CDFI Fund, the unexpended balance of assistance, and whether the Applicant will, with additional assistance from the CDFI Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities; and

(11) The CDFI Fund may consider any other factors, as it deems appropriate, in reviewing an application as set forth in an applicable Notice of Funds Availability.

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

(1) An Insured CDFI;

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

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

(d) *Consultation with Appropriate State Agencies.* Prior to providing assistance to a State-Insured Credit Union, the CDFI Fund may consult with, and consider the views of, the Appropriate State Agency.

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

Subpart H—Terms and Conditions of Assistance

§ 1805.800 Safety and soundness.

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

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

§ 1805.801 Assistance Agreement; sanctions.

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

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

- (1) Be financially sound;
- (2) Be managerially sound;
- (3) Maintain appropriate internal controls; and/or
- (4) Achieve specific lending, investment, and development service objectives.

Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency, as applicable. Such goals shall be incorporated in, and enforced under, the Recipient's Assistance Agreement.

Performance goals for State-Insured Credit Unions may be determined in consultation with the Appropriate State Agency, if deemed appropriate by the CDFI Fund.

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

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

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

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

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

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

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

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

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

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

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

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

§ 1805.802 Payment of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any assistance under this part until a Recipient has satisfied any required conditions set forth in its Assistance Agreement and, if the Recipient is to receive financial assistance, the Recipient has secured in-hand and/or firm commitments for the matching funds required for such assistance pursuant to the applicable Notice of Funds Availability.

§ 1805.803 Data collection and reporting.

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

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

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

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* A Recipient (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the CDFI Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

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

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

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

that will permit the CDFI Fund to review the Recipient's progress (and the progress of its Affiliates, Subsidiaries, and/or Community Partners, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. The information and documentation shall include, but not be limited to, an audit and an annual report, which shall comprise the following components:

(1) *Audits and Audited Financial Statements.* (i) All non-profit organizations that are required to have their financial statements audited pursuant to the Uniform Requirements, must submit their single-audits no later than nine months after the end of the Recipient's fiscal year. Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to the Uniform Requirements, must submit to the CDFI Fund a statement signed by the Recipient's Authorized Representative or certified public accountant, asserting that the Recipient is not required to have a single audit pursuant to the Uniform Requirements as indicated in the Assistance Agreement. In such instances, the CDFI Fund may require additional audits to be performed as stated in the applicable Notice of Funds Availability.

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

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

(iv) If multiple for-profit organizations sign the Assistance Agreement: The Recipient may submit combined financial statements and footnotes for

the Recipient and other entities that signed the Assistance Agreement as long as the financial statements of each signatory are shown separately (for example, in combining financial statements).

(2) *Annual Report.* (i) Each Recipient shall submit to the CDFI Fund a performance and financial report at the times that shall be specified in the Assistance Agreement (Annual Report). The Annual Report consists of several components which may include, but are not limited to, an institution level report, transaction level report, use of financial or technical assistance report, explanation of any Recipient non-compliance, and shareholder report. The Annual Report components shall be specified and described in the Assistance Agreement.

(ii) The CDFI Fund will use the Annual Report to collect data to assess the Recipient's compliance with its Performance Goals and the impact of the CDFI Program and the CDFI industry.

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

(3) The CDFI Fund's review of the progress of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(4) *Public Access.* The CDFI Fund shall make reports described in this section available for public inspection

after deleting or redacting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies and Appropriate State Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the CDFI 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 CDFI Fund.

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

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

cy or Appropriate State Agency, as the case may be.

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

(6) The CDFI Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about a Recipient 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 CDFI Fund nor the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be) shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

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

§ 1805.804 Information.

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

§ 1805.805

§ 1805.805 Compliance with government requirements.

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

§ 1805.806 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) A Recipient that is a Non-Regulated CDFI may not use any monies provided to it by the CDFI 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 Recipient 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 CDFI Fund.

(2) A Recipient that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b) *Recipient standards of conduct.* A Recipient that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the CDFI 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 CDFI Fund. No Insider of a

12 CFR Ch. XVIII (1-1-16 Edition)

Recipient 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 Recipient's Insiders.

§ 1805.807 Lobbying restrictions.

No assistance made available under this part may be expended by a Recipient to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.808 Criminal provisions.

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

§ 1805.809 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to Control a Recipient 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 CDFI 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 CDFI Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 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.

**PART 1806—BANK ENTERPRISE
AWARD PROGRAM**

Subpart A—General Provisions

- Sec.
1806.100 Purpose.
1806.101 Summary.
1806.102 Relationship to other programs.
1806.103 Definitions.
1806.104 Uniform Administrative Requirements; Waiver authority.
1806.105 OMB control number.

Subpart B—Eligibility

- 1806.200 Applicant eligibility.

**Subpart C—Use of funds/Qualified
Activities**

- 1806.300 Qualified Activities.
1806.301 Restrictions on use of award.

Subpart D—Award Determinations

- 1806.400 General.
1806.401 Community eligibility and designation.
1806.402 Measuring and reporting Qualified Activities.
1806.403 Estimated award amounts.
1806.404 Selection process; actual award amounts.
1806.405 Applications for BEA Program Awards.

**Subpart E—Terms and Conditions of
Assistance**

- 1806.500 Award Agreement; sanctions.
1806.501 Compliance with government requirements.
1806.502 Fraud, waste, and abuse.
1806.503 Books of account, records, and government access.
1806.504 Retention of records.

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

SOURCE: 80 FR 25582, May 5, 2015, unless otherwise noted.

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award (BEA) Program is to provide grants to Insured Depository Institutions that provide financial and technical assistance to Community Development Financial Institutions and increase their activities in Distressed Communities.

§ 1806.101 Summary.

Through the BEA Program, the CDFI Fund will provide monetary awards in the form of grants to Applicants selected by the CDFI Fund that increase their investments in or provide other support of CDFIs, increase their lending and investment activities in Distressed Communities, or increase their provision of certain services and assistance. Distressed Communities must meet minimum geographic, poverty, and unemployment criteria. Applicants are selected to receive BEA Program Awards through a merit-based, competitive application process. The amount of a BEA Program Award is based on the increase in Qualified Activities that are carried out by the Applicant during the Assessment Period. BEA Program Awards are disbursed by the CDFI Fund after the Recipient has successfully completed projected Qualified Activities. Each Recipient will enter into an Award Agreement, which will require it to abide by terms and conditions pertinent to any assistance received under this part, including the requirement that BEA Program Award proceeds must be used for Qualified Activities, as well as the Uniform Administrative Requirements, as applicable. All BEA Program Awards are made subject to funding availability.

§ 1806.102 Relationship to other programs.

(a) Restrictions on applying for, receiving and using BEA Program Awards in conjunction with awards under other programs administered by the CDFI Fund (including, but not limited to, the Capital Magnet Fund, the CDFI Program, the CDFI Bond Guarantee Program, the Native American CDFI Assistance Program, and the New Markets Tax Credit Program) are as set forth in the applicable notice of funding opportunity or Notice of Allocation Availability.

(b) *Prohibition against double funding.* Qualified Activities may not include transactions funded in whole or in part with award proceeds from another CDFI Fund program or Federal program.

§ 1806.103 Definitions.

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

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

Affordable Housing Development Loan means origination of a loan to finance the acquisition, construction, and/or development of single- or multi-family residential real property, where at least 60 percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Eligible Residents who meet Low- and Moderate-Income requirements;

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

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

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

Assessment Period means an annual or semi-annual period specified in the applicable NOFA in which an Applicant will carry out, or has carried out, Qualified Activities;

Award Agreement means a formal agreement between the CDFI Fund and a Recipient pursuant to §1806.500;

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

Bank Enterprise Award Program (or *BEA Program*) means the program au-

thorized by section 114 of the Act and implemented under this part;

Baseline Period means an annual or a semi-annual period specified in the applicable NOFA, in which an Applicant has previously carried out Qualified Activities;

CDFI Partner means a CDFI that has been provided assistance in the form of CDFI Related Activities by an unaffiliated Applicant;

CDFI Related Activities means Equity Investments, Equity-Like Loans and CDFI Support Activities;

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

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

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

Commercial Real Estate Loan means an origination of a loan (other than an Affordable Housing Development Loan or Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and or development of property in a Distressed Community, used for commercial purposes;

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

Community Development Financial Institutions Fund (or *CDFI Fund*) means the Community Development Financial Institutions Fund established pursuant to Section 104(a)(12 U.S.C. 4703(a)) of the Act;

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

(1) Provision of Technical Assistance and financial education to Eligible

Residents regarding managing their personal finances;

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

(3) Provision of Technical Assistance and financial education to, or servicing the loans of, homeowners and homeowners who are Eligible Residents and meet Low- and Moderate-Income requirements;

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

Deposit Liabilities means time or savings deposits or demand deposits. Any such deposit must be accepted from Eligible Residents at the offices of the Applicant or of the Subsidiary of the Applicant and located in the Distressed Community. Deposit Liabilities may only include deposits held by individuals in transaction accounts (e.g., demand deposits, negotiable order of withdrawal accounts, automated transfer service accounts, and telephone or preauthorized transfer accounts) or non-transaction accounts (e.g., money market deposit accounts, other savings deposits, and all time deposits), as defined by the Appropriate Federal Banking Agency;

Development Service Activities means activities that promote community development and are integral to the Applicant's provision of financial products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the financial products or Financial Services of the Applicant. Development Service Activities include 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.

Distressed Community means a geographically defined community that meets the minimum area eligibility re-

quirements specified in section 1806.401 and such additional criteria as may be set forth in the applicable NOFA;

Distressed Community Financing Activities means: Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; Small Business Loans and related Project Investments; and Small Dollar Consumer Loans;

Education Loan means an advance of funds to a student who is an Eligible Resident, for the purpose of financing a college or vocational education;

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

Eligible Resident means an individual who resides in a Distressed Community;

Equity Investment means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund;

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

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

Geographic Units means counties (or equivalent areas), incorporated places,

minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and Indian Areas or Native American Areas (as each is defined by the U.S. Bureau of the Census), or other areas deemed appropriate by the CDFI Fund;

Home Improvement Loan means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence, where such borrower is an Eligible Resident who is Low- and Moderate-Income;

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

Individual Development Account (or *IDA*) means a special savings account that matches the deposits of Low- and Moderate-Income individuals and that enables Low- and Moderate-Income individuals to save money for a particular financial goal including, but not limited to, and as determined by the CDFI Fund: buying a home, paying for post-secondary education, or starting or expanding a small business;

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

Integrally Involved means, for a CDFI Partner, having provided or transacted the percentage of financial transactions or dollars (*i.e.*, loans or Equity Investments), or Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, or having attained the percentage of market share for a particular product in a Distressed Community, set forth in the applicable NOFA;

Low- and Moderate-Income means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development,

with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

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

Notice of Funding Availability (or *NOFA*) means the public notice of funding opportunity that announces the availability of BEA Program Award funds for a particular funding round and that advises prospective Applicants with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round;

Priority Factor means a numeric value assigned to each type of activity within each category of Qualified Activity, as established by the CDFI Fund in the applicable NOFA. A priority factor represents the CDFI Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

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

Qualified Activities means CDFI Related Activities, Distressed Community Financing Activities, and Service Activities;

Recipient means an Applicant that receives a BEA Program Award pursuant to this part and the applicable NOFA;

Service Activities means the following activities: Deposit Liabilities; Financial Services; Community Services;

Targeted Financial Services; and Targeted Retail Savings/Investment Products;

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

Small Dollar Consumer Loan means affordable consumer lending products that serve as available alternatives in the marketplace for individuals who are Eligible Residents and meet criteria further specified in the applicable NOFA;

State means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands;

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

Targeted Financial Services means ETAs, IDAs, and such other banking products targeted to Eligible Residents who meet Low- and Moderate-Income requirements, as may be specified by the CDFI Fund in the applicable NOFA;

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

Technical Assistance means the provision of consulting services, resources, training, and other nonmonetary support relating to an organization, indi-

vidual, or operation of a trade or business, as may be specified by the CDFI Fund in the applicable NOFA; and

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

§ 1806.104 Uniform Administrative Requirements; Waiver authority.

(a) *Uniform Administrative Requirements.* The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Administrative Requirements), codified by the Department of the Treasury at 2 CFR part 1000, apply to awards, regardless of type of award Recipient, made pursuant to this part.

(b) *Waiver authority.* The CDFI Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the FEDERAL REGISTER.

§ 1806.105 OMB control number.

The collection of information requirements in this Part have been approved by the Office of Management and Budget and assigned the applicable, approved OMB Control Number associated with the CDFI Fund under 1559-0005.

Subpart B—Eligibility

§ 1806.200 Applicant Eligibility.

General requirements. An entity that is an Insured Depository Institution is eligible to apply for a BEA Program Award if the CDFI Fund receives a complete BEA Program Award application by the deadline set forth in the applicable Notice of Funding Availability

§ 1806.300

(NOFA). Additional eligibility requirements are set forth in the applicable NOFA.

Subpart C—Use of Funds/Qualified Activities

§ 1806.300 Qualified Activities.

To receive a BEA Program Award, an Insured Depository Institution must increase its Qualified Activities within the period of time set forth in the applicable NOFA. Recipients of BEA Program Awards must also use their payments for Qualified Activities, as described in the applicable NOFA and the Award Agreement.

§ 1806.301 Restrictions of use of award.

A Recipient may not distribute BEA Program Award funds to an Affiliate without the CDFI Fund's prior written consent.

Subpart D—Award Determinations

§ 1806.400 General.

The amount of a BEA Program Award shall be based on the Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period, as set forth in the applicable NOFA.

§ 1806.401 Community eligibility and designation.

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

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

(1) *Minimum area requirements.* A Distressed Community:

12 CFR Ch. XVIII (1–1–16 Edition)

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

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

(iii) The area must:

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

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

(C) Be located entirely within an Indian Reservation.

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

(i) At least 30 percent of the Eligible Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census or in other sources as set forth in guidance issued by the CDFI Fund;

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recently published data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census-Share calculation method, or in other sources as set forth in guidance issued by the CDFI Fund; and

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

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

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

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section, provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation.* The CDFI Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated

as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

§ 1806.402 Measuring and reporting Qualified Activities.

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

(b) *Reporting Qualified Activities.* An Applicant should report only its Qualified Activities for the category for which it is seeking a BEA Program Award.

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

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

(c) *Area served.* CDFI Related Activities must be provided to a CDFI. CDFI Partners that are the recipients of CDFI Support Activities must demonstrate that they are Integrally Involved in a Distressed Community. Service Activities and Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(1) Undertaken in the Distressed Community; or

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

(d) *Certain Limitations on Qualified Activities.* Activities funded with the proceeds of Federal funding or tax credit programs are ineligible for purposes of calculating or receiving a Bank Enterprise Award. Please see the applicable NOFA for each funding round's limitations on Qualified Activities. Qualified Activities shall not include loans to or investments in those business types set forth in the Uniform Administrative Requirements.

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

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

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

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described in paragraphs (e)(3)(i) and (ii) of this section:

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

§ 1806.403

12 CFR Ch. XVIII (1–1–16 Edition)

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

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

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

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

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

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

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

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

as may be set forth by the CDFI Fund in the applicable NOFA.

§ 1806.403 Estimated award amounts.

(a) *General.* An Applicant must calculate and submit to the CDFI Fund an estimated award amount as part of its BEA Program Award application.

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

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

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

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

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

§ 1806.404 Selection process; actual award amounts.

(a) *Sufficient funds available to cover estimated awards.* All BEA Program Awards are subject to the availability of funds. If the amount of appropriated funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the CDFI Fund's determination, and an Applicant meets all of the program requirements specified in this part, then such Applicant shall receive an actual award amount that is

calculated by the CDFI Fund in the manner specified in § 1806.403.

(b) *Insufficient funds available to cover estimated awards.* If the amount of funds available during a funding round is insufficient to cover all estimated award amounts for which Applicants are eligible, in the CDFI Fund's determination, then the CDFI Fund will select Recipients and determine actual award amounts based on the process described in subsection 1806.404(c) and any established maximum dollar amount of awards that may be awarded for the Distressed Community Financing Activities category, as described in the applicable NOFA.

(c) *Priority of awards.* In circumstances where there are insufficient funds to cover estimated awards, the CDFI Fund will rank Applicants based on whether the Applicant is a CDFI or a non-CDFI, and in each category of Qualified Activity (e.g., Service Activities) according to the priorities described in this paragraph (c). Selections within each priority category will be based on the Applicants' relative rankings within each category, and based on whether the Applicant is a CDFI or a non-CDFI, subject to the availability of funds.

(1) *First priority.* If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to CDFI Applicants that engaged in CDFI Related Activities, followed by non-CDFI Applicants that engaged in CDFI Related Activities ranked in the ratio as set forth in the applicable NOFA.

(2) *Second priority.* If the amount of funds available during a funding round is sufficient for all first priority Applicants but insufficient for all remaining estimated award amounts, second priority will be given to CDFI Applicants that engaged in Distressed Community Financing Activities, followed by non-CDFI Applicants that engaged in CDFI Related Activities, ranked in the ratio as set forth in the applicable NOFA.

(3) *Third priority.* If the amount of funds available during a funding round is sufficient for all first and second priority Applicants, but insufficient for all remaining estimated award amounts, third priority will be given to CDFI Applicants that engaged in Serv-

ice Activities, followed by non-CDFI Applicants that engaged in Service Activities, ranked in the ratio as set forth in the applicable NOFA.

(d) *Calculating actual award amounts.* The CDFI Fund will determine actual award amounts based upon the availability of funds, increases in Qualified Activities from the Baseline to the Assessment Period, and an Applicant's priority ranking. If an Applicant receives an award for more than one priority category described in this section, the CDFI Fund will combine the award amounts into a single BEA Program Award.

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

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

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

(3) As otherwise authorized by the Act.

(f) *Limitation.* The CDFI Fund, in its sole discretion, may deny or limit the amount of a BEA Program Award for any reason.

§ 1806.405 Applications for BEA Program Awards.

(a) *Notice of funding availability; applications.* Applicants must submit applications for BEA Program Awards in accordance with this section and the applicable NOFA. An Applicant's application must demonstrate a realistic course of action to ensure that it will meet the requirements described in subpart D within the period set forth in the applicable NOFA. Detailed application content requirements are found in the related application and applicable NOFA. The CDFI Fund will not disburse an award to an Applicant before it meets the eligibility requirements described in the applicable NOFA. The CDFI Fund shall require an Applicant to meet any additional eligibility requirements that the CDFI Fund deems appropriate. After receipt of an application, the CDFI Fund may request clarifying or technical information related to materials submitted as part of such application and/or to verify that

§ 1806.500

Qualified Activities were carried out in the manner prescribed in this Part. The CDFI Fund, in its sole discretion, shall determine whether an applicant fulfills the requirements set forth in this part and the applicable NOFA.

(b) *Application contents.* An application for a BEA Program Award must contain:

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

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

(3) Documentation of Qualified Activities that meets the required thresholds and conditions described in §1806.402(f) and the applicable NOFA;

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

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

(6) In the case of an Applicant that engaged in Service Activities, or Distressed Community Financing Activities, the Applicant must confirm, by submitting documentation as described in the applicable NOFA and BEA Program application, the Service Activi-

12 CFR Ch. XVIII (1–1–16 Edition)

ties or Distressed Community Financing Activities were provided to:

(i) Eligible Residents that resided in a Distressed Community, or

(ii) A business located in a Distressed Community.

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

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

Subpart E—Terms and Conditions of Assistance

§ 1806.500 Award Agreement; sanctions.

(a) *General.* After the CDFI Fund selects a Recipient, the CDFI Fund and the Recipient will enter into an Award Agreement. In addition to the requirements of the Uniform Administrative Requirements, the Award Agreement will require that the Recipient:

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

(2) Must comply with such other terms and conditions that the CDFI Fund may establish;

(3) Will not receive any BEA Program Award payment until the CDFI Fund has determined that the Recipient has fulfilled all applicable requirements;

(4) Must comply with performance goals that have been established by the CDFI Fund. Such performance goals will include measures that require the Recipient to use its BEA Program Award funds for Qualified Activities; and

(5) Must comply with all data collection and reporting requirements. Each Recipient must submit to the CDFI Fund such information and documentation that will permit the CDFI Fund to

review the Recipient's progress in satisfying the terms and conditions of its Award Agreement, including:

(i) *Annual report.* Each Recipient shall submit to the CDFI Fund at least annually and within 90 days after the end of each year of the Recipient's performance period, an annual report that will provide data that, among other things, demonstrates the Recipient's compliance with its performance goals (including a description of any non-compliance), its uses of the BEA Program Award funds, and the impact of the BEA Program and the CDFI industry. Recipients are responsible for the timely and complete submission of the annual report.

(ii) *Financial statement.* A Recipient is not required to submit its financial statement to the CDFI Fund. The CDFI Fund may obtain the necessary information from publicly available sources.

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

(c) *Compliance with other CDFI Fund awards.* In the event that an Applicant, Recipient, or its Subsidiary or Affiliate is not in compliance, as determined by the CDFI Fund, with the terms and conditions of any CDFI Fund award, the CDFI Fund may, in its sole discretion, bar said Applicant or Recipient from applying for future BEA Program Awards or withhold payment (either initial or subsequent) of BEA Program Award funds.

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

§ 1806.501 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Recipient must comply with all applicable Federal, State, and local laws, regulations (including but not limited to the Uniform Administrative Requirements, ordinances, and Executive Orders).

§ 1806.502 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.

§ 1806.503 Books of account, records, and government access.

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

(b) The Award Agreement provides that the provisions of the Act, this part, and the Award Agreement are enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (b) precludes the CDFI Fund from directly enforcing the Award Agreement as provided for under the terms of the Act.

(c) The CDFI Fund will notify the Appropriate Federal Banking Agency before imposing any sanctions on a Recipient that is examined by or subject to the reporting requirements of that

§ 1806.504

agency. The CDFI Fund will not impose a sanction described in section 1806.500(b) if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the CDFI Fund:

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

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

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

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

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

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

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

§ 1806.504 Retention of records.

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

PART 1807—CAPITAL MAGNET FUND

Subpart A—General Provisions

- Sec.
- 1807.100 Purpose.
- 1807.101 Summary.
- 1807.102 Relationship to other CDFI Fund programs.
- 1807.103 Awardee not instrumentality.
- 1807.104 Definitions.

12 CFR Ch. XVIII (1–1–16 Edition)

- 1807.105 Waiver authority.
- 1807.106 OMB control number.

Subpart B—Eligibility

- 1807.200 Applicant eligibility.

Subpart C—Use of Funds/Eligible Activities

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

Subpart D—Qualification as Affordable Housing

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

Subpart E—Leveraging and Commitment Requirement.

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

Subpart F—Tracking Requirements

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

Subpart G—Applications for Assistance

- 1807.700 Notice of Funds Availability.

Subpart H—Evaluation and Selection of Applications

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

Subpart I—Terms and Conditions of Assistance

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

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

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

Subpart A—General Provisions**§ 1807.100 Purpose.**

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

§ 1807.101 Summary.

(a) Through the CMF, the CDFI Fund will competitively award grants to CDFIs and qualified Nonprofit Organizations to leverage dollars for:

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

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

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

§ 1807.102 Relationship to other CDFI Fund programs.

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

§ 1807.103 Awardee not instrumentality.

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

§ 1807.104 Definitions.

For the purpose of this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) *Control* means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company;

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

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

(t) *Economic Development Activity* means the development, preservation, rehabilitation, or purchase of Community Service Facilities and/or other

physical structures in which neighborhood-based businesses operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area;

(u) *Eligible-Income* means:

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

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

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

(w) *Extremely Low-Income* means:

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

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

(x) *Families* means households that reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands) and that meet the criteria set forth in §1807.104(u), (w), (jj) or (fff);

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

(z) *Homeownership* means ownership in fee simple title or a 99-year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or equivalent form of ownership (which shall include cooperative housing and mutual housing project). For purposes of housing located on trust or restricted Indian lands, homeownership

includes leases of 50 years. The ownership interest may be subject only to the following:

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

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

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

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

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

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

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

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

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

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

(hh) *Loan Guarantee* means an agreement to indemnify the holder of a loan all or a portion of the unpaid principal

balance in case of default by the borrower;

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

(jj) *Low-Income* means:

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

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

(kk) *Low-Income Area (LIA)* means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located. With respect to a census tract or block numbering area located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater. In the case of a census tract or block numbering area located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide Non-Metropolitan Area median family income or the national Non-Metropolitan Area median family income, whichever is greater;

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

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

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

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

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

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

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

(qq) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in 12 CFR 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

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

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

(tt) *Preservation* means:

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

(2) Activities to refinance and acquire single-family or multi-family properties that, at the time of refinancing or acquisition, were subject to affordability and use restrictions under similar State or Federal affordable

housing programs, by the former tenants of such properties, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

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

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

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

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

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

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

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

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

(zz) *Service Area* means the geographic area in which the Applicant

proposes to use CMF funding, and the geographic area approved by the CDFI Fund in which the Awardee shall use CMF funding as set forth in its Assistance Agreement;

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

(bbb) *State* means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory of the United States;

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

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

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

- (1) Qualifies as a Low-Income Area;
- (2) Is experiencing housing stress evidenced by 30 percent or more of resident households with one or more of these four housing conditions in the last decennial census:
 - (i) Lacked complete plumbing,
 - (ii) Lacked complete kitchen,
 - (iii) Paid 30 percent or more of income for owner costs or rent, or
 - (iv) Had more than 1 person per room; or
- (3) Is remote-rural county consisting of a Non-Metropolitan Area that is also not adjacent to a Metropolitan Area;

(fff) *Very Low-Income* means:

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

§ 1807.105 Waiver authority.

The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be

in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the FEDERAL REGISTER.

§ 1807.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559-0036.

Subpart B—Eligibility

§ 1807.200 Applicant eligibility.

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

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

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

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

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

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

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

(iii) Can demonstrate that at least one-third of the Applicant's resources

§ 1807.300

(either as a portion of total staffing or as a portion of total assets) are dedicated to the development or management of affordable housing.

(b) *Eligibility verification.* An Applicant shall demonstrate that it meets the eligibility requirements described in § 1807.200(a)(2) of this section by providing information described in the application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund. For an Applicant seeking eligibility under § 1807.200(a)(1), the CDFI Fund will verify that the Applicant is a Certified CDFI during the application eligibility review. For an Applicant seeking eligibility under § 1807.200(a)(2), the CDFI Fund, in its sole discretion, shall determine whether the Applicant has satisfied said requirements.

Subpart C—Use of Funds/Eligible Activities

§ 1807.300 Purposes of grants.

The CDFI Fund may provide financial assistance grants to organizations described under subpart B of this part for the purpose of attracting private capital for and increase investment in:

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

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

§ 1807.301 Eligible activities.

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

- (a) To provide Loan Loss Reserves;
- (b) To capitalize a Revolving Loan Fund;
- (c) To capitalize an Affordable Housing Fund;

12 CFR Ch. XVIII (1–1–16 Edition)

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

(e) For Risk-Sharing Loans;

(f) For Loan Guarantees; and

(g) For the Awardee's Operations.

§ 1807.302 Restrictions on use of assistance.

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

(1) Political activities;

(2) Advocacy;

(3) Lobbying, whether directly or through other parties;

(4) Counseling services (including homebuyer or financial counseling);

(5) Travel expenses;

(6) Preparing or providing advice on tax returns;

(7) Emergency shelters (including shelters for disaster victims);

(8) Nursing homes;

(9) Convalescent homes;

(10) Residential treatment facilities;

(11) Correctional facilities; or

(12) Student dormitories.

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

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

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

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

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

Subpart D—Qualification as Affordable Housing

§ 1807.400 Affordable housing—general.

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

§ 1807.401 Affordable housing—rental housing.

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

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

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

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

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

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

(b) *Nondiscrimination against rental assistance subsidy holders.* The Awardee

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

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

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

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

§ 1807.402

12 CFR Ch. XVIII (1–1–16 Edition)

prior written notice before the implementation of the rent increase.

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

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

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

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

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

(C) Farm self-employment income;

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

(E) Social Security or railroad retirement;

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

(G) Retirement, survivor, or disability pensions;

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

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

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

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

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

(4) The CDFI Fund reserves the right to deem certain government programs,

under which a Low-Income family is a recipient, as income eligible for purposes of meeting the tenant income requirements under this subsection.

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

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

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

§ 1807.402 Affordable housing—homeownership.

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

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

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

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

(4) *Periods of Affordability.* Housing under this subsection must meet the affordability requirements for at least 10 years at the time of purchase by the homeowner.

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

original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

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

(1) The estimated value of the housing, after Rehabilitation, does not exceed 95 percent of the median purchase price for the area, as used in the HOME Program and as determined by the applicable Participating Jurisdiction; or

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

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

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

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

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

Subpart E—Leveraging and Commitment Requirement

§ 1807.500 Leveraged costs—general.

(a) Each CMF grant is expected to result in Eligible Project Costs that total at least 10 times the grant amount. Such costs may be for activities that

§ 1807.501

include Affordable Housing Activities, Economic Development Activities, or Community Service Facilities. Thus, an Awardee shall demonstrate that it leveraged, over its CMF funded portfolio, its CMF award at least 10 times the CMF grant amount or some other standard established by the CDFI Fund in the Awardee's Assistance Agreement. Leveraged Costs are costs that exceed the dollar amount of the Awardee's CMF contribution to each CMF-funded activity. However, the applicable NOFA may set forth a required percentage of Leveraged Costs that must be attributable to non-governmental sources. An Awardee may report to the CDFI Fund all Leveraged Costs, with the following limitations:

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

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

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

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

§ 1807.501 Commitment for use.

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

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

12 CFR Ch. XVIII (1-1-16 Edition)

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

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

§ 1807.502 Assistance limits.

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

§ 1807.503 Project completion.

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

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

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

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

(2) The housing must meet the accessibility requirements at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings,

as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

(3) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. The installation of all manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using CMF funds must meet the requirements set out in paragraph (b)(1) of this section; and

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

Subpart F—Tracking Requirements

§ 1807.600 Tracking funds—general.

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

§ 1807.601 Nature of funds.

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

Subpart G—Applications for Assistance

§ 1807.700 Notice of funds availability.

Each Applicant shall submit an application for funding under this part in accordance with the regulations in this subpart. The applicable NOFA will advise potential Applicants on how to obtain and complete an application and will establish deadlines and other requirements. The NOFA will specify any limitations, special rules, procedures,

and restrictions for a particular funding round. After receipt of an application, the CDFI Fund may request clarifying or technical information on the materials submitted as part of such application.

Subpart H—Evaluation and Selection of Applications

§ 1807.800 Evaluation and selection—general.

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

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

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

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

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

(2) The rate of unemployment or underemployment;

(3) The extent of blight and disinvestment;

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

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

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

§ 1807.801 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive a CMF award if it fails to meet the eligibility requirements described in Part 1807.200 and in the applicable NOFA, or if the Applicant has not submitted complete application materials. For

§ 1807.900

12 CFR Ch. XVIII (1–1–16 Edition)

the purposes of this paragraph (a), the CDFI Fund reserves the right to request additional information from the Applicant, if the CDFI Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the CDFI Fund will evaluate the Applicant’s likelihood of success in meeting the factors set forth in the applicable NOFA, including but not limited to:

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

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

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

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

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

Subpart I—Terms and Conditions of Assistance

§ 1807.900 Assistance agreement.

(a) Each Applicant that is selected to receive a CMF award must enter into an Assistance Agreement with the

CDFI Fund. The Assistance Agreement will set forth certain required terms and conditions of the Assistance Agreement which may include, but are not limited to, the following:

(1) The amount of the award;

(2) The approved uses of the award;

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

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

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

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

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

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

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

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

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

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

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

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

§ 1807.901 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or in some other manner, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any assistance under this part until an

Awardee has satisfied all conditions set forth in the applicable NOFA and Assistance Agreement.

§ 1807.902 Data collection and reporting.

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

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

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

(3) Evaluate the impact of CMF funding.

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

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

(d) *Retention of records.* An Awardee shall comply with all record retention

requirements as set forth in OMB Circular A-110 (as applicable).

(e) *Data collection and reporting.* (1) Financial Reporting: (i) All Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements that have been reviewed by an independent certified public accountant in accordance with *Statements on Standards for Accounting and Review Services*, issued by the American Institute of Certified Public Accountants by a time set forth in the applicable Notice of Funding Availability or Assistance Agreement (audited financial statements can be provided by the due date in lieu of reviewed statements, if available). Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) that are required to have their financial statements audited pursuant to OMB Circular A-133 *Audits of States, Local Governments and Non-Profit Organizations*, must also submit their A-133 audited financial statements by a time set forth in the applicable NOFA or Assistance Agreement. Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, must submit to the CDFI Fund a statement signed by the Awardee's authorized representative or certified public accountant, asserting that the Awardee is not required to have a single audit pursuant OMB Circular A-133.

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

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

§ 1807.903

(2) Performance Goal Reporting: Performance goals and measures that are specific to the Awardee's application for funding shall be met as set forth in its Assistance Agreement. Awardees shall submit data and information to the CDFI Fund regarding achievement of these Performance Goals as described in the Assistance Agreement.

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

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

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

§ 1807.903 Compliance with government requirements.

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

§ 1807.904 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1807.905 Criminal provisions.

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

§ 1807.906 CDFI Fund deemed not to control.

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

12 CFR Ch. XVIII (1–1–16 Edition)

§ 1807.907 Limitation on liability.

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

§ 1807.908 Fraud, waste and abuse.

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

PART 1808—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS BOND GUARANTEE PROGRAM

Subpart A—General Provisions

Sec.	
1808.100	Purpose.
1808.101	Summary.
1808.102	Definitions.
1808.103	Participant not instrumentality.
1808.104	Deviations.
1808.105	Relationship to other CDFI Fund programs.
1808.106	OMB control number.

Subpart B—Eligibility

1808.200	Qualified Issuers.
1808.201	Designated Bonding Authority.
1808.202	Eligible CDFIs.

Subpart C—Interest Rates; Terms and Conditions of Bonds, Bond Loans, and Secondary Loans

1808.300	Interest rates.
1808.301	Eligible uses of Bond Proceeds.
1808.302	Bond terms and conditions.
1808.303	Risk-Share Pool.
1808.304	Eligible uses of Bond Loan proceeds.
1808.305	Bond Loan terms and conditions.
1808.306	Conditions precedent to Bond and Bond Loan.
1808.307	Secondary Loan Eligible Purposes; Terms and conditions.

Comm. Devel. Fin. Insts. Fund, Treas. Dept.

§ 1808.101

- 1808.308 Relending Fund; Relending Account.
- 1808.309 Restrictions on uses of Bond Proceeds and Bond Loan proceeds.

Subpart D—Applications for Guarantee and Qualified Issuer

- 1808.400 Notice of Guarantee Availability.
- 1808.401 Application requirements.

Subpart E—Evaluation and Selection

- 1808.500 Evaluation of Qualified Issuer Applications.
- 1808.501 Evaluation of Guarantee Applications.
- 1808.502 Evaluation of Designated Bonding Authority Applications.
- 1808.503 Consultation with Appropriate Regulatory Agencies.
- 1808.504 Selection of Qualified Issuers; Approval for Guarantee.

Subpart F—Terms and Conditions of Guarantee

- 1808.600 Full faith and credit and incontestability of Guarantee.
- 1808.601 Assignment and transfer of Guarantee.
- 1808.602 Offer of Guarantee.
- 1808.603 Issuance of Guarantee.
- 1808.604 Agreement to Guarantee.
- 1808.605 Agency Administrative Fee.
- 1808.606 Program Administrator; Servicer; Master Servicer/Trustee.
- 1808.607 Representations and warranties of Qualified Issuer with respect to Guarantee.
- 1808.608 Representations and warranties of Eligible CDFI with respect to each Bond Loan.
- 1808.609 Representations and warranties of Secondary Borrower.
- 1808.610 Covenants of Qualified Issuer with respect to Guarantee.
- 1808.611 Covenants of Eligible CDFI with respect to Bond and each Bond Loan.
- 1808.612 Specific financial covenants of Eligible CDFI.
- 1808.613 Negative covenants of Eligible CDFI.
- 1808.614 Covenants of Secondary Borrower with respect to Secondary Loan.
- 1808.615 Negative covenants of Secondary Borrower.
- 1808.616 Events of default and remedies with respect to Bonds.
- 1808.617 Events of default and remedies with respect to Bond Loans.
- 1808.618 Events of default and remedies with respect to Secondary Loans.
- 1808.619 Reporting requirements.
- 1808.620 Investments in Guaranteed Bonds ineligible for Community Reinvestment Act Purposes.

- 1808.621 Conflict of interest requirements.
- 1808.622 Compliance with government requirements.
- 1808.623 Lobbying restrictions.
- 1808.624 Criminal provisions.
- 1808.625 CDFI Fund deemed not to control.
- 1808.626 Limitation on liability.
- 1808.627 Fraud, waste and abuse.

AUTHORITY: The Small Business Jobs Act of 2010, Pub. L. 111-240, §§1134 and 1703; 12 U.S.C. 4713a.

SOURCE: 78 FR 8310, Feb. 5, 2013, unless otherwise noted.

Subpart A—General Provisions

§ 1808.100 Purpose.

The purpose of the Community Development Financial Institutions (CDFI) Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued as part of a Bond Issue for Eligible Community or Economic Development Purposes, as authorized by sections 1134 and 1703 of the Small Business Jobs Act of 2010 (Pub. L. 111-240; 12 U.S.C. 4713a).

§ 1808.101 Summary.

This section provides a summary overview of certain key provisions of the interim rule, the detailed requirements of which are set forth in subsequent subparts.

(a) *Guarantee.* Through the CDFI Bond Guarantee Program, the Guarantor will provide a Guarantee for Bonds issued by Qualified Issuers as part of a Bond Issue.

(b) *Bonds.* Pursuant to the Act at 12 U.S.C. 4713a(e), a Bond Issue shall comprise Bonds having a minimum aggregate principal amount of \$100,000,000 and a maximum aggregate principal amount of \$1,000,000,000. The principal amount of each Bond (or series of Bonds) shall not be less than \$10,000,000. A Bond Rate for each advance of funds under a Bond will be established by the Bond Purchaser as of the date of the respective advance, as provided in the Bond.

(c) *Bond Loans to Eligible CDFIs.* The Qualified Issuer will use Bond Proceeds to make Bond Loans to Eligible CDFIs for Eligible Purposes, as those terms are defined in section 1808.102. The CDFI Fund will evaluate each Eligible

§ 1808.102

12 CFR Ch. XVIII (1-1-16 Edition)

CDFI using standard Bond Loan Requirements to assess their creditworthiness and capacity to receive a Bond Loan. Each Eligible CDFI may borrow a Bond Loan in an amount that is at least \$10,000,000. The Bond Loan Rate shall be the same as the Bond Rate on the particular advance of funds under the Bond that funds the Bond Loan. The aggregate of the principal amounts of the Bond Loans must not exceed the maximum principal amount of the corresponding Bond Issue. The Qualified Issuer must execute Bond Loan documents for 100 percent of the principal amount of each Bond on the Bond Issue Date. Bond Loan proceeds may not be drawn down from the Qualified Issuer until the Eligible CDFI has an immediate use for the Bond Loan proceeds. Five percent, or such other amount that is determined by the CDFI Fund in its sole discretion, of Bond Loan proceeds may be used by an Eligible CDFI to capitalize Loan Loss Reserves.

(d) *Secondary Loans to Secondary Borrowers.* If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows:

(1) Not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans; and

(2) Not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

(e) *Terms and conditions.* Bonds, Bond Loans and Secondary Loans shall have terms and conditions as set forth in Subpart F of this interim rule including at a minimum, that:

(1) Each Bond shall be a nonrecourse obligation of the Qualified Issuer, payable solely from amounts available pursuant to the Bond Documents. Each promissory note evidencing a Bond Loan shall be a general recourse obligation of the Eligible CDFI and secured

by a first lien on collateral. Each Secondary Loan shall be secured by a first lien on collateral and payable solely from amounts available pursuant to the Secondary Loan documents;

(2) The maturity date of a Bond shall not be later than 30 years after the Bond Issue Date. The maturity date of Bond Loans and Secondary Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond;

(3) The Bonds shall be purchased by the Bond Purchaser on terms and conditions that are satisfactory to the Bond Purchaser, the Guarantor, and the CDFI Fund (under specific requirements set forth in §1808.302 and the Bond Documents); and

(4) The Guarantor shall guarantee payments on Bonds issued as part of a Bond Issue in such forms and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as set forth in this interim rule in Subpart F. These requirements may be expanded upon through the program's Notice of Guarantee Availability, the Bond Documents, and the Bond Loan documents. The Qualified Issuer shall enter into the applicable Bond Documents to evidence its acceptance of the terms and conditions of the Guarantee.

§ 1808.102 Definitions.

For purposes of this part, capitalized terms used herein and not defined elsewhere are defined as follows:

(a) *Act* means the Small Business Jobs Act of 2010, Pub. L. 111-240, sections 1134 and 1703, 12 U.S.C. 4713a;

(b) *Affiliate* means any entity that Controls, is Controlled by, or is under common Control with, another entity. Control is defined as:

(1) Ownership, control or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities (as that term is defined in 12 CFR 1805.104(mm)) of any legal entity, directly or indirectly or acting through one or more other persons; or

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any legal entity; or

(3) The power to exercise, directly or indirectly, a controlling influence, as determined by the CDFI Fund, over the management, credit decisions, investment decisions, or policies of any legal entity;

(c) *Agency Administrative Fee* means a fee in an amount equal to 10 basis points (0.1 percent) of the amount of the unpaid principal of the Bond Issue, payable annually to the CDFI Fund by a Qualified Issuer;

(d) *Agreement to Guarantee* means the written agreement between the Guarantor and the Qualified Issuer which sets forth the terms and conditions on which the Guarantor will provide the Guarantee;

(e) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q), and includes, with respect to an Insured Credit Union (as such term is defined in 12 CFR 1805.104(bb)), the National Credit Union Administration;

(f) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union (as such term is defined in 12 CFR 1805.104(e));

(g) *Bond* means a security in the form of a draw-down bond or note issued by the Qualified Issuer, with each advance of funds thereunder bearing interest at an applicable Bond Rate established by the Bond Purchaser in accordance with section 1808.300 of this part, and sold to the Bond Purchaser, the proceeds of which will be used for Eligible Purposes, and which benefit from a Guarantee;

(h) *Bond Documents* mean, for each Bond, the respective Bond, Bond Trust Indenture, Agreement to Guarantee, Bond purchase agreement, and all other instruments and documentation pertaining to the issuance of the Bond;

(i) *Bond Issuance Fees* mean amounts paid by an Eligible CDFI for reasonable and appropriate expenses, administrative costs, and fees for services incurred in connection with the issuance of the Bond (but not including the Agency Administrative Fee) and the making of the Bond Loan;

(j) *Bond Issue* means at least \$100,000,000, and no more than

\$1,000,000,000, in aggregate principal amount of Bonds secured by a single Guarantee; each Bond (or series of Bonds) in the Bond Issue being in the minimum principal amount of at least \$10,000,000;

(k) *Bond Issue Date* means the date on which the Bond is deemed to be issued or originated;

(l) *Bond Loan* means a loan of Bond Proceeds by a Qualified Issuer to an Eligible CDFI. A Bond Loan must be in an initial principal amount that is not less than \$10,000,000, and Bond Loan proceeds must be used for Eligible Purposes;

(m) *Bond Loan Payment Default Rate* means, in the event of a Bond Loan payment default, the applicable interest rate on any overdue amount from its due date to the date of actual payment and shall be calculated in the same manner as a late charge rate is calculated in the underlying Bond;

(n) *Bond Loan Rate* means the rate of interest for each advance of funds under a Bond Loan, which shall be the same as the Bond Rate;

(o) *Bond Loan Requirements* means the credit criteria, established by the CDFI Fund, for assessing the creditworthiness and capacity of each Eligible CDFI applicant to receive a Bond Loan;

(p) *Bond Proceeds* means the funds that are advanced by the Bond Purchaser to the Qualified Issuer under a Bond;

(q) *Bond Purchaser (or Bondholder)* means the Federal Financing Bank, the body corporate and instrumentality of the Federal Government created by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 *et seq.*);

(r) *Bond Rate* means the rate of interest for each advance of funds under a Bond;

(s) *Bond Trust Indenture* means the agreement between the Qualified Issuer and the Master Servicer/Trustee that sets forth the rights, duties, responsibilities and remedies of the Qualified Issuer and Master Servicer/Trustee with respect to the Bonds, to include responsibilities regarding the management of the collateral, the management of the funds and accounts, the repayment and redemption of the Bonds, and the circumstances and processes surrounding any default;

(t) *Capital Distribution Plan* means the component of the Guarantee Application that demonstrates the Qualified Issuer's comprehensive plan for lending, disbursing, servicing, and monitoring each Bond Loan and that meets the requirements of § 1808.401 of this interim rule and such other requirements as may be designated in the applicable Notice of Guarantee Availability. The Capital Distribution Plan includes, among other components (specified in § 1808.401 of this interim rule), a Statement of Proposed Sources and Uses of Funds, and shall include one or more Secondary Capital Distribution Plans;

(u) *CDFI Bond Guarantee Program (or Program)* means the program of providing Guarantees for Bonds issued as part of a Bond Issue by Qualified Issuers to make Bond Loans to Eligible CDFIs for Eligible Purposes, as authorized by subsections 1134 and 1703 of the Act (12 U.S.C. 4713a), and implemented under this part;

(v) *Certified Community Development Financial Institution (or Certified CDFI)* means a financing entity that has a primary mission of promoting community development and that has been certified by the CDFI Fund as meeting the eligibility requirements set forth in 12 CFR 1805.201;

(w) *Community Development Financial Institutions Fund (or CDFI Fund)* means the Community Development Financial Institutions Fund, a wholly owned government corporation within the U.S. Department of the Treasury, established under the Riegle Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*), as amended;

(x) *Credit Enhancement* means such instrument or document proffered by an Eligible CDFI to enhance the credit quality of a Bond and/or Bond Loan. Credit Enhancements may include, but are not limited to, pledges of financial resources and lines and letters of credit issued by: an Eligible CDFI; an Affiliate; a regulated financial institution; a foundation; or another entity. The Risk-Share Pool is not a form of Credit Enhancement;

(y) *Department Opinion* means an internal opinion by the CDFI Fund regarding compliance by the Qualified

Issuer with the requirements for approval of a Guarantee;

(z) *Designated Bonding Authority (or DBA)* means a Qualified Issuer selected by the CDFI Fund to issue Bonds on behalf of certain Eligible CDFIs and make Bond Loans to such Eligible CDFIs, pursuant to this interim rule;

(aa) *Eligible Community Development Financial Institution (or Eligible CDFI)* means a Certified CDFI that has submitted an application to a Qualified Issuer for a Bond Loan, has been deemed creditworthy based on the Bond Loan Requirements, and has received a Bond Loan;

(bb) *Eligible Community or Economic Development Purpose (or Eligible Purpose)* means the allowable uses of Bond Proceeds and Bond Loan proceeds, which includes financing or Refinancing for community or economic development purposes described in 12 U.S.C. 4707(b), including but not limited to community or economic development purposes in Low-Income Areas or Underserved Rural Areas, as deemed eligible by the CDFI Fund in its sole discretion; Bond Issuance Fees in an amount not to exceed one percent of Bond Loan proceeds; and capitalization of Loan Loss Reserves in an amount that is up to five percent of the par amount of the Bond Loan, or such other amount that is determined by the CDFI Fund in its sole discretion;

(cc) *Guarantee* means the guarantee by the Guarantor, pursuant to an Agreement to Guarantee, of the repayment of 100 percent of the Verifiable Losses of Principal, Interest, and Call Premium, if any, on the corresponding Bonds issued as part of a Bond Issue; each Guarantee shall be for a Bond Issue of at least \$100,000,000, plus the related interest and call premiums;

(dd) *Guarantee Application* means the application document that a Qualified Issuer submits in order to apply for a Guarantee;

(ee) *Guarantor* means the Secretary of the Treasury or the Secretary's designee;

(ff) *Investment Area* means a geographic area meeting the requirements of 12 CFR 1805.201(b)(3)(ii);

(gg) *Loan Loss Reserves* means the use of Bond Loan proceeds (secured by a Principal Loss Collateral Provision) for

a set aside in the form of cash reserves that serve as a safeguard to protect the Eligible CDFI against future losses for any loans for community or economic development purposes described in 12 U.S.C. 4707 (b), including community or economic development purposes in Low-Income Areas or Underserved Rural Areas, within the Eligible CDFI's portfolio;

(hh) *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: (1) 80 percent of the area median family income; or (2) 80 percent of the Statewide non-Metropolitan Area median family income;

(ii) *Low-Income Area* means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located. With respect to a census tract or block numbering area located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income, whichever is greater. In the case of a census tract or block numbering area located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(jj) *Master Servicer/Trustee* means a third party trust company or financial institution that is in the business of administering facilities similar to the Bonds and Bond Loans, has been deemed acceptable by the CDFI Fund, and whose duties include, among others, exercising fiduciary powers to enforce the terms of Bonds and Bond Loans pursuant to the Bond Trust Indenture entered into by and between the Master Servicer/Trustee and the Qualified Issuer, overseeing the activities of Servicers, and facilitating Bond principal and interest payments to the Bond Purchaser;

(kk) *Metropolitan Area* means an area that contains an urban core based sta-

tistical area of 50,000 or more population and is designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e), 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended;

(ll) *Notice of Guarantee Availability (or NOGA)* means the notice, published by the CDFI Fund, that announces to all interested parties the opportunity to submit Qualified Issuer Applications and Guarantee Applications pursuant sections 1808.400 and 1808.401 of this interim rule;

(mm) *Principal Loss Collateral Provision* means a cash or cash equivalent guarantee or facility provided in lieu of pledged collateral set forth in the Bond Documents and Bond Loan documents;

(nn) *Program Administrator* means the Qualified Issuer, or an entity designated by the Qualified Issuer and approved by the CDFI Fund, that performs certain administrative duties related to application preparation, compliance monitoring, and reporting, as well as other duties set forth under section 1808.606 of this interim rule;

(oo) *Qualified Issuer* means a Certified CDFI, or any entity designated by a Certified CDFI to issue Bonds on its behalf, that meets the qualification requirements set forth in section 1808.200 of this interim rule, and that has been approved as such by the CDFI Fund pursuant to review and evaluation of the Qualified Issuer Application;

(pp) *Qualified Issuer Application* means the application document that a Certified CDFI (or any entity designated by a Certified CDFI to issue Bonds on its behalf) submits to the CDFI Fund in order to be approved as a Qualified Issuer prior to, or simultaneously with, a Guarantee Application;

(qq) *Qualified Secondary Loan Receivable* means payment receivables from the Secondary Loan(s) relating to the corresponding Bond Loan;

(rr) *Refinance (or Refinancing)* means the use of Bond Proceeds to refinance an Eligible CDFI's or Secondary Borrower's existing loan, which must have been used for an Eligible Purpose;

(ss) *Relending Fund* means the fund maintained by the Master Servicer/Trustee to allow an Eligible CDFI to relend Secondary Loan repayments for

Eligible Purposes, not to exceed 10 percent of the principal amount outstanding of the Bonds, minus the Risk Share Pool; the Relending Fund will include a Relending Account for each Bond Issue; and each Relending Account will include a Relending Sub-account for each Bond Loan;

(tt) *Risk-Share Pool* means an account maintained by the Master Servicer/Trustee throughout the term of a Guarantee to cover losses before the Guarantee is exercised; the Risk-Share Pool is capitalized by pro rata payments equal to three percent of the amount disbursed on the Bonds from all Eligible CDFIs within a Bond Issue; payments must be funded at each disbursement under the Bond and associated Bond Loan; amounts in the Risk-Share Pool will not be returned to the Eligible CDFIs until maturity of all of the Bonds, and termination of all Bond Loans, within a Bond Issue;

(uu) *Secondary Borrower* means an entity that has made application to the Eligible CDFI for a Secondary Loan, been deemed creditworthy by the Eligible CDFI, meets the criteria set forth in the applicable Secondary Loan Requirements to receive a Secondary Loan, and has received a Secondary Loan;

(vv) *Secondary Capital Distribution Plan* means the component of the Capital Distribution Plan that pertains to the making of Secondary Loans, demonstrates the Eligible CDFI's comprehensive plan for lending, disbursing, servicing and monitoring Secondary Loans, includes a description of how the proposed Secondary Loan will meet Eligible Purposes and meets such other the requirements as may be designated in the applicable Notice of Guarantee Availability;

(ww) *Secondary Loan* means the use of Bond Loan proceeds by an Eligible CDFI to finance or Refinance a loan to a Secondary Borrower for Eligible Purposes, which meets the applicable Secondary Loan Requirements;

(xx) *Secondary Loan Requirements* mean the minimum required criteria used by each Eligible CDFI (in addition to the Eligible CDFI's underwriting criteria) to evaluate a request by a Secondary Borrower applicant for a Secondary Loan. The Secondary Loan

Requirements will be established by the CDFI Fund and incorporated into the Bond Loan documents;

(yy) *Servicer* means the Qualified Issuer, or an entity designated by the Qualified Issuer and approved by the CDFI Fund, to perform various Bond Loan servicing duties, as set forth in this part;

(zz) *Special Servicer* means the Master Servicer/Trustee, or an entity designated by the Master Servicer/Trustee and approved by the CDFI Fund, that performs certain administrative duties related to the restructuring of Bond Loans that are in or about to enter into an event of default as well as other duties set forth under section 1808.606(d) of this interim rule;

(aaa) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory of the United States;

(bbb) *Statement of Proposed Sources and Uses of Funds* means the component of the Guarantee Application that describes the proposed uses of Bond Proceeds and the proposed sources of funds to repay principal and interest on the Bonds and the Bond Loans;

(ccc) *Targeted Population* means individuals or an identifiable group of individuals who are Low-Income persons or lack adequate access to Financial Products or Financial Services and meet the requirements of 12 CFR 1805.201(b)(3)(iii);

(ddd) *Trust Estate* means the Bond Loan agreement and promissory notes evidencing the Bond Loan, all funds and accounts related to the Bonds and held by the Master Servicer/Trustee pursuant to the Bond Trust Indenture including, but not limited to, the Revenue Accounts and the Relending Accounts (as such terms are defined in subsection 1808.606(f)), and any additional collateral pledged directly by the Eligible CDFI;

(eee) *Underserved Rural Area* means an area that has significant unmet needs for loans, Equity Investments, or Financial Services (as those terms are defined in 12 CFR 1805.104) and is not

contained within either a Consolidated Metropolitan Statistical Areas (CMSA) or Primary Metropolitan Statistical Areas (PMSA), as such areas are defined in OMB Bulletin No. 99-04 (Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions); and

(fff) *Verifiable Losses of Principal, Interest, and Call Premium* means any portion of required debt payments related to or arising out of a Bond and Bond Loan, or the enforcement of either of them, that the Qualified Issuer is unable satisfy.

§ 1808.103 Participant not instrumentality.

No participant in the CDFI Bond Guarantee Program shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1808.104 Deviations.

To the extent that such requirements are not specified by statute, the Secretary of the Treasury in consultation with the Office of Management and Budget, may authorize deviations on an individual or general basis from the requirements of this interim rule upon a finding that such deviation is essential to program objectives, and the special circumstances stated in the proposal make such deviation clearly in the best interest of the Federal Government. All proposals must be in writing and supported by a statement of the facts and the grounds forming the basis of the deviation. For deviations of general applicability, after a determination is made by the Secretary of the Treasury based on the deviation proposal, the CDFI Fund must publish notification of granted deviations in the FEDERAL REGISTER. Any deviation that was not captured in the original credit subsidy cost estimate will require either additional fees, or discretionary appropriations to cover the cost.

§ 1808.105 Relationship to other CDFI Fund programs.

Award funds received under any other CDFI Fund program cannot be used by any participant, including Qualified Issuers, Eligible CDFIs and Secondary Borrowers, to pay principal,

interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool.

§ 1808.106 OMB control number.

The collection of information requirements in this part are subject to the review of the Office of Management and Budget (OMB).

Subpart B—Eligibility

§ 1808.200 Qualified Issuers.

(a) *Requirements and qualifications.* An applicant shall be deemed a Qualified Issuer if it is determined, in writing by the CDFI Fund, to meet the following criteria:

(1) The applicant must be a Certified CDFI, or an entity designated by a Certified CDFI to issue Bonds on its behalf;

(2) The applicant must have appropriate expertise, capacity, and experience, or otherwise be qualified to issue Bonds for Eligible Purposes;

(3) The applicant must have appropriate expertise, capacity, and experience, or otherwise be qualified to make Bond Loans for Eligible Purposes;

(4) The applicant must have appropriate expertise, capacity, and experience to serve or have identified qualified entities that will serve as its Program Administrator and Servicer; and

(5) The applicant must meet such other criteria as may be required by the CDFI Fund pursuant to this interim rule and the applicable Notice of Guarantee Availability.

(b) *Approval.* The designation of an applicant as a Qualified Issuer does not ensure that the Guarantor will approve a Guarantee Application or issue a Guarantee. In order for the Guarantor to approve a Qualified Issuer's Guarantee Application, the Qualified Issuer must meet all applicable Guarantee Application requirements including, but not limited to, creditworthiness and other requirements.

(c) *Qualified Issuer responsibilities.* The responsibilities of a Qualified Issuer shall include, but are not limited to:

(1) Preparing and submitting the Guarantee Application on behalf of Eligible CDFI applicants that designated

§ 1808.201

it to serve as Qualified Issuer, including providing any additional information needed for review by the CDFI Fund;

(2) During the CDFI Fund's review and evaluation of the Guarantee Application, serving as primary point of contact between the CDFI Fund and the Eligible CDFI applicants that designated the Qualified Issuer to serve on their behalf;

(3) Issuing the Bond for purchase by the Bond Purchaser;

(4) Making Bond Loans to Eligible CDFIs, ensuring that 100 percent of Bond Proceeds are used to make Bond Loans;

(5) Charging interest on the Bond Loans as set forth in this interim rule and Bond Loan documents, and providing for such a schedule of repayment of Bond Loans as will, upon the timely repayment of the Bond Loans, provide adequate and timely funds for the payment of principal and interest on the Bonds;

(6) During the duration of the Bonds and the Bond Loans, serving as primary point of contact between the CDFI Fund and Eligible CDFIs;

(7) Overseeing the work of, or serving in the capacity of, the Program Administrator and Servicer;

(8) Enforcing the terms and requirements of the Bond Trust Indenture including, but not limited to: ensuring the repayment of Bond Loans in a timely manner pursuant to the terms of Bond Loan documents; assigning delinquent Bond Loans to the Guarantor upon demand by the CDFI Fund or the Guarantor; and ensuring that the Master Servicer/Trustee establishes and maintains the Risk-Share Pool throughout the term of the Guarantee;

(9) Reviewing collateral and Credit Enhancement requirements for each Bond Loan and providing information on such collateral and Credit Enhancement, as requested, to the CDFI Fund;

(10) Making payment of the Agency Administrative Fee to the CDFI Fund;

(11) Submitting all required reports and additional documentation (including reconciling financial data and Capital Distribution Plan updates, as necessary); and

12 CFR Ch. XVIII (1-1-16 Edition)

(12) Such other duties and responsibilities as the CDFI Fund, the Guarantor, or the Bondholder may require.

(d) *Bond Issuance Fees.* The Qualified Issuer may charge Bond Issuance Fees and all fees reasonable and necessary for administering and servicing the Bonds or the Bond Loans, post issuance, to Eligible CDFIs.

(e) *Restriction.* A Qualified Issuer may not receive a Bond Loan under any Bond Issuance for which it serves as a Qualified Issuer.

§ 1808.201 Designated Bonding Authority.

(a) *General.* In its sole discretion, the CDFI Fund may solicit Qualified Issuer Applications from entities proposing to serve as the Designated Bonding Authority (DBA). The CDFI Bond Guarantee Program shall only have one DBA at any given time. In order to be selected to serve as the DBA, the entity must meet all qualifications of a Qualified Issuer set forth in section 1808.200 of this interim rule; additional qualifications may be set forth in the applicable NOGA as determined by the CDFI Fund.

(b) *Selection.* The DBA will serve as a CDFI Fund-selected Qualified Issuer and designated Qualified Issuer for Eligible CDFIs that do not elect to designate another Qualified Issuer. The DBA will prepare and submit a Guarantee Application on behalf of such Eligible CDFI applicants, in accordance with such criteria set forth in this interim rule, the applicable Notice of Guarantee Availability and the Qualified Issuer Application.

§ 1808.202 Eligible CDFIs.

Each Eligible CDFI applicant seeking a Bond Loan must meet the following criteria:

(a) Be certified by the CDFI Fund as meeting the eligibility requirements set forth in 12 CFR 1805.201;

(b) Have the appropriate expertise, capacity, and experience, or otherwise be qualified to use the proceeds of Bond Loans for Eligible Purposes; and

(c) Meet such other criteria and requirements set forth in the applicable Notice of Guarantee Availability, the Guarantee Application, the Bond Loan Requirements, related Bond and Bond

Loan documents, and such other requirements of the CDFI Fund.

charge is calculated under the underlying Bond.

Subpart C—Interest Rates; Terms and Conditions of Bonds, Bond Loans, and Secondary Loans

§ 1808.301 Eligible uses of Bond Proceeds.

§ 1808.300 Interest rates.

Bond Proceeds must be used by a Qualified Issuer to finance Bond Loans or Refinance loans to Eligible CDFIs for Eligible Purposes as defined in section 1808.102 of this interim rule. A Qualified Issuer that is also a Certified CDFI may not finance a Bond Loan to itself or refinance its own loan. One hundred percent of the principal amount of each Bond must be used to make Bond Loans. As a Bond Loan is repaid, such repaid Bond Loan proceeds in excess of those required for debt service payments on the Bond must be used to repay the Bond or held in the Relending Account and used for additional Secondary Loans, to the extent authorized under § 1808.308.

(a) *Interest rates.* (1) A Bond Rate will be established by the Bond Purchaser as of the date of the respective advance of funds, as provided in the Bond. The Bond Rate for each advance of funds must be fixed and consistent with Federal credit policies outlined in OMB Circular A-129. The FFB, as Bond Purchaser, will set rates to the borrower pursuant to section 6(b) of the Federal Financing Bank Act (12 U.S.C. 2285(b)) and the FFB Lending Policy. This rate will be indexed to the appropriate Treasury rate based on the Treasury yield curve and include a spread to be determined by the Bond Purchaser; variable Bond Rates are not permitted.

§ 1808.302 Bond terms and conditions.

(2) Interest on each advance of funds under a Bond shall be computed as provided in the Bond.

(a) *Maturity date.* As required by 12 U.S.C. 4713a(e)(1)(D), the maturity date of a Bond shall not be later than 30 years after the Bond Issue Date. The maturity date for any advance of funds under a Bond shall not be later than the maturity date of the Bond.

(3) A principal and interest payment schedule will be determined and provided to the Qualified Issuer for each advance of funds under a Bond, based on the Bond Rate established for the respective advance. The final principal and interest payment schedule for amounts due under a Bond will be the aggregation of the individual principal and interest payment schedules for all advances of funds under the Bond.

(b) *Nonrecourse obligation.* Each Bond shall be a nonrecourse obligation of the Qualified Issuer, payable solely from amounts available pursuant to the Bond Documents.

(4) The Bond Loan Rate shall be the same as the Bond Rate on the particular advance of funds under the Bond that funds the Bond Loan.

(c) *Terms.* The Bonds may contain only terms that are consistent with the lending policies and terms of the Bond Purchaser.

(5) The rate of interest for each Secondary Loan shall be established by the Eligible CDFI in accordance with subsection 1808.307(c), and may be subject to limitations specified in the applicable NOGA.

(d) *No subordination.* The Bonds or Bond Loans may not be subordinated to any new or existing liability and effective subordination of the Bonds or Bond Loans to tax-exempt obligations will render the Guarantee void, in accordance with OMB Circular No. A-129 (Policies for Federal Credit Programs and Non-Tax Receivables) and applicable provisions of the Internal Revenue Code.

(b) *Bond Loan payment default interest rate.* In the event of a payment default on a Bond Loan, the Eligible CDFI shall pay interest on any overdue amount from its due date to the date of actual payment at the Bond Loan Payment Default Rate. The Bond Loan Payment Default Rate shall be calculated in the same manner as a late

(e) *Other limitations.* The CDFI Fund may impose other limitations as appropriate to administer the CDFI Bond Guarantee Program including, but not limited to, requiring Qualified Issuers to obtain Credit Enhancement to safeguard against the risk of default.

§ 1808.303

12 CFR Ch. XVIII (1–1–16 Edition)

(f) *Terms for Bond issuance and disbursement of Bond Proceeds.* (1) The Qualified Issuer must execute Bond Loan documents for 100 percent of the principal amount of each Bond on the Bond Issue Date. There will be an annual assessment to determine whether the Qualified Issuer is subject to the repayment provision established in 12 U.S.C. 4713a(c)(4). Terms and conditions for the annual assessment will be set forth in the applicable Notice of Guarantee Availability.

(2) Disbursements of Bond Proceeds to the Qualified Issuer shall be made pursuant to an advance request process established by the Bond Purchaser and the CDFI Fund under which the Qualified Issuer shall request an advance of funds under a Bond.

(g) *Amortization of Bond.* The principal amount of each advance of funds under a Bond shall amortize in level debt service payments of principal and interest, which payments shall be due either quarterly or semi-annually, as determined by the Qualified Issuer and the Bond Purchaser, and which shall begin on the first principal payment date specified in the Bond, as determined by the Qualified Issuer and the Bond Purchaser. Prior to the first principal payment date, interest accrued shall be due on the payment dates specified in the Bond, as determined by the Qualified Issuer and the Bond Purchaser.

(h) *Optional prepayment of Bonds.* All or a portion of any advance of funds under a Bond, or the Bond in its entirety, may be prepaid by the Qualified Issuer at any time. Any partial prepayment of an advance shall be in an amount equal to at least \$100,000 of principal. Each partial prepayment of an advance of funds under a Bond shall be applied in the manner set forth in the Bond. Any partial or full prepayment of an advance of funds under a Bond shall be subject to the payment of a prepayment price, as provided in the Bond Documents.

(i) *Mandatory prepayment of Bonds.* (1) Any Bond shall be subject to mandatory prepayment if Bond Loans or Secondary Loans are not made in a timely manner, as follows:

(i) On the Calculation Date (as defined in subsection 1808.308(e)) of each

year, any amount retained in the Relending Subaccount that exceeds the Relending Subaccount Maximum (as defined in subsection 1808.308(d)) by \$100,000 or more shall be applied to prepay Bonds on the next succeeding payment date.

(ii) Any amounts derived from the liquidation of collateral from the Bond Loan and/or Secondary Loan in connection with the exercise by the Guarantor, the Qualified Issuer or the Bondholder of remedies upon default of the Bond Loan shall be applied, immediately upon liquidation, in the following order (inclusive of reasonable fees and expenses associated therewith):

(A) To the repayment of any amounts drawn under the Guarantee;

(B) To the prepayment of Bonds, in a like amount;

(C) To the replenishment of any funds drawn from the Risk-Share Pool Fund; and

(D) To the Eligible CDFI for application in accordance with the Secondary Loan documents.

(2) When an amount is required to be applied as a mandatory prepayment of Bonds, the Qualified Issuer may select which advances of funds under a Bond are to be prepaid. Any amount applied as a partial prepayment of an advance under a Bond shall be applied as provided in the Bond. Any partial or full prepayment of an advance of funds under a Bond shall be subject to the payment of a prepayment price, as provided in the Bond Documents.

§ 1808.303 Risk-Share Pool.

The Master Servicer/Trustee, on behalf of the Qualified Issuer and for the benefit of the Bondholder, shall establish a Risk-Share Pool that is funded at each disbursement of the Bond Loan proceeds by payment from each Eligible CDFI in accordance with 12 U.S.C. 4713a(d). The Risk-Share Pool must remain in place throughout the term of the Guarantee. Amounts in the Risk Share Pool Fund will not be returned to Eligible CDFIs until maturity of all of the Bonds, and termination of all of the Bond Loans, within a Bond Issue.

(a) At each disbursement of the Bond Loan proceeds, each Eligible CDFI shall deposit an amount that is equal

to three percent of the disbursement, for a total of three percent of the guaranteed amount outstanding of the Bond, from monies other than Bond Loan proceeds, into the applicable sub-account of the Risk-Share Pool Fund. Such monies shall remain in said account throughout the term of the Bond.

(b) Any interest on a Bond Loan in excess of the Bond Loan Rate derived by the Qualified Issuer during any period during which the Bond Loan Payment Default Rate applies shall also be deposited in the Risk-Share Pool Fund.

(c) The Risk-Share Pool Fund shall be applied by the Master Servicer/Trustee to payments of debt service on the Bond Issue in the event that the Eligible CDFI defaults in the corresponding payment of debt service on the Bond Loan. The defaulted Eligible CDFI's deposit shall be applied first to any such payment of debt service. After depletion of the defaulted Eligible CDFI's deposit, each remaining Eligible CDFI's deposit shall be applied prorata to any such payment of debt service. Monies on deposit in the Risk-Share Pool Fund shall be applied to such payments and shall be depleted in full prior to any draw on the Guarantee.

(d) Eligible CDFIs (excluding the Eligible CDFI in default and responsible for a draw) shall not be required to replenish the Risk-Share Pool Fund in the event of a draw.

(e) The Risk Share Pool deposit shall be sufficient collateral to secure any draw on Bond Loan proceeds related to the costs of issuance pursuant to 1808.304(b).

(f) In the event of a payment default on the Bond Loan by an Eligible CDFI, the Qualified Issuer shall notify the CDFI Fund and request permission to draw from the Risk-Share Pool to cover any default of principal and interest payments due to the Bond Purchaser.

(g) Amounts in the Risk Share Pool Fund will not be returned to Eligible CDFIs until maturity of all of the Bonds, and termination of all of the Bond Loans, within a Bond Issue. Upon maturity of all of the Bonds, and termination of the Bond Loans, within a Bond Issue, the pro rata amount of

each Eligible CDFI's payments in the Risk-Share Pool shall be returned to each Eligible CDFI; provided however, that such Eligible CDFI has properly replenished any draws on the Risk-Share Pool attributed to nonpayment of its Bond Loan and the corresponding Bond.

§ 1808.304 Eligible uses of Bond Loan proceeds.

(a) *Eligible uses.* Bond Loan proceeds shall be only used for Eligible Purposes, to prefund one monthly installment of Bond Loan payments, and to pay Bond Issuance Fees. As a Bond Loan is repaid, such repaid Bond Loan proceeds must be held in the Relending Account and used for additional Secondary Loans, to the extent authorized under § 1808.308.

(b) *Bond Issuance Fees.* (1) Amounts not to exceed one percent of Bond Loan proceeds may be applied to pay Bond Issuance Fees. Bond Loan proceeds that are used to pay Bond Issuance Fees shall be applied in the following order of priority:

(i) To pay reasonable transaction fees and expenses of the Qualified Issuer, its advisors and consultants, related to the Bond issuance (but not including any salaries or administrative costs of the Qualified Issuer unrelated to the Bond issuance);

(ii) To pay reasonable transaction fees and expenses of the Master Servicer/Trustee, its advisors and consultants, related to the Bond issuance; and

(iii) To pay reasonable transaction fees and expenses of the Eligible CDFI, its advisors and consultants, related to the making of the Bond Loan.

(2) Any fees and expenses arising out of each transaction which, in the aggregate, exceed the one percent limit on Bond Issuance Fees payable from Bond Loan proceeds must be paid by the Eligible CDFI from monies other than Bond Loan proceeds.

(c) *Prefunding of Bond Loan payments.* Bond Loan proceeds may be used to prefund one monthly installment of Bond Loan payments.

§ 1808.305 Bond Loan terms and conditions.

(a) *Maturity date.* The maturity date of a Bond Loan shall not be later than 30 years after the Bond Issue Date. The maturity date of Bond Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond.

(b) *Bond Loan general recourse obligation; Collateral.* (1) The Bond Loan shall be a general recourse obligation of the Eligible CDFI.

(2) The Bond Loan shall be further secured by a first lien of the Master Servicer/Trustee, on behalf of the Bondholder, on:

(i) The Trust Estate;

(ii) Qualified Secondary Loan Receivables; and

(iii) Either:

(A) An assignment of the Secondary Loan collateral (other than a Principal Loss Collateral Provision) from the Eligible CDFI to the Master Servicer/Trustee; or

(B) Provision of a Principal Loss Collateral Provision for the benefit of the Master Servicer/Trustee, in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(3) The CDFI Fund may, in its sole discretion, approve alternative forms of Bond Loan collateral.

(4) A parity first lien on pledged collateral may be accepted, in the sole discretion of the CDFI Fund.

(5) If any collateral becomes non-performing during the term of the Bond Loan, the Guarantor may require the applicable Eligible CDFI to substitute other collateral that is of equal quality to the initial collateral, when performing, acceptable to the Guarantor in its sole discretion.

(6) An Eligible CDFI's parent organization, Affiliate, or an entity that is related to the Eligible CDFI through its management structure, may assume limited recourse obligation for the Bond Loan if it provides Credit Enhancement and/or pledges financial resources or such other financial support or risk mitigation that would enhance the Eligible CDFI's creditworthiness and its ability to repay the Bond Loan, thereby decreasing the risk underlying the Guarantee.

(c) *Disbursement of Bond Loan proceeds.* (1) Bond Loans shall be draw-down loans. Disbursements of Bond Loan proceeds to the Eligible CDFI shall be made pursuant to a requisition process established by the Bond Purchaser and the CDFI Fund, which shall include a process by which the Qualified Issuer shall request an advance from the Bondholder under the Bond and a process by which the Eligible CDFI shall request disbursement from the Qualified Issuer.

(2) Each requisition shall be accompanied by invoices and certifications by the Eligible CDFI (and the Secondary Borrower, if applicable) as to expenditure of proceeds for Eligible Purposes.

(3) No Bond Loan proceeds may be disbursed later than 60 months after the Bond Issue Date. Any Bond Loan proceeds not disbursed will have been forfeited by the Eligible CDFI.

(4) Disbursements to capitalize the Eligible CDFI's Loan Loss Reserves shall be made pursuant to a requisition process established by the Qualified Issuer and the CDFI Fund.

(d) *Amortization of Bond Loan.* Each Bond Loan shall amortize in the same manner as the corresponding Bond; provided that principal and/or interest on each Bond Loan shall be payable to the Qualified Issuer in monthly installments based on the required quarterly or semi-annual installments, as applicable, due on the corresponding Bond; provided further, that each Eligible CDFI shall prefund one monthly payment installment not later than the thirtieth day prior to the first payment date of the corresponding Bond so that on the thirtieth day prior to such Bond payment date, the Eligible CDFI shall have paid in full all amounts due on the Bond payment date.

(e) *Optional prepayment of Bond Loan.* The Bond Loan shall be subject to prepayment, in whole or in part, at the option of the Eligible CDFI in accordance with the optional prepayment provisions of the corresponding Bond (including the required prepayment minimums of \$100,000) and shall be subject to the payment of a prepayment price, as determined by the Bondholder in accordance with the corresponding Bond.

(f) *Mandatory prepayment of Bond Loan.* The Bond Loan shall be subject to mandatory prepayment by the Eligible CDFI in accordance with the mandatory prepayment provisions of the corresponding Bond.

§ 1808.306 Conditions precedent to Bond and Bond Loan.

The ability of the Qualified Issuer to issue a Bond and make a Bond Loan shall be subject to the satisfaction of the following conditions precedent:

(a) Evidence satisfactory to the Qualified Issuer that the Eligible CDFI will comply with the terms and conditions of the Bond Loan documents, including repayment of the Bond Loan;

(b) Evidence satisfactory to the Qualified Issuer, the Guarantor, and the CDFI Fund that the Eligible CDFI has the authority to enter into the Bond Loan, has secured the Credit Enhancement, if any, demonstrated a reasonable prospect of repayment of the Bond Loan, and pledged the collateral (including executed security documents, UCC-1 financing statements or mortgages, as applicable);

(c) A Guarantee Application that has been approved by the Guarantor;

(d) A satisfactory credit review by the CDFI Fund and in compliance with the Bond Loan Requirements, including submission of complete and accurate Guarantee Application materials, submitted in a timely manner, demonstrating the Eligible CDFI's ability to repay the Bond Loan;

(e) Opinions of legal counsel to the Qualified Issuer and the Eligible CDFI;

(f) Executed Bond Loan documents;

(g) Organizational documents of the Eligible CDFI;

(h) Certifications by the Qualified Issuer and Eligible CDFIs that Bond Proceeds and Bond Loan proceeds will not be used for lobbying by recipients of Federal loans or guarantees;

(i) A statement that no default, event of default, or due and unsatisfied liability has occurred and is continuing with respect to any obligations of the Qualified Issuer and each Eligible CDFI to the CDFI Fund, the Guarantor, the Bond Purchaser, the U.S. Internal Revenue Service, or any other agency, authority or instrumentality of the Federal Government; and

(j) Any other conditions precedent set forth in the Bond Loan documents, including documentation that any credit enhancements have been secured by the Eligible CDFI.

§ 1808.307 Secondary Loan Eligible Purposes; Terms and conditions.

(a) *Eligible Purposes.* Eligible CDFIs must make Secondary Loans for Eligible Purposes. Secondary Loan proceeds may not be used to capitalize loan loss reserves.

(b) *Making Secondary Loans.* (1) If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows:

(i) Not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of the Eligible CDFIs' Bond Loan proceeds allocated for Secondary Loans; and

(ii) Not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of the Eligible CDFIs' Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

(2) In the event that the Eligible CDFI does not comply with the foregoing requirements of paragraphs (b)(1)(i) and (ii) of this section, the available Bond Loan proceeds at the end of the applicable period shall be reduced by an amount equal to the difference between the amount required by paragraphs (b)(1)(i) and (ii) minus the amount previously committed to the Secondary Loans in the applicable period. Consistent with the corresponding Bond Loan, the Secondary Loans shall be drawn down by the Secondary Borrowers upon demonstration of an Eligible Purpose.

(c) *Secondary Loan interest rate.* The rate of interest with respect to each Secondary Loan shall be determined by each Eligible CDFI in accordance with the following limitations:

(1) With respect to each Secondary Loan, the Eligible CDFI will be required to propose to the CDFI Fund:

(i) A minimum and maximum spread over the corresponding Bond Loan Rate which will represent the standard minimum and maximum interest rate (Minimum Secondary Loan Rate and Maximum Secondary Loan Rate, respectively); and

(ii) A maximum spread over the Maximum Secondary Loan Rate in event of a Secondary Loan default (Maximum Secondary Loan Default Spread).

(2) The CDFI Fund reserves the right to evaluate, approve, modify, or disapprove the proposed Minimum Secondary Loan Rate, Maximum Secondary Loan Rate, and Maximum Secondary Loan Default Spread before approving any Guarantee Application.

(d) *Secondary Loan default rate.* The Eligible CDFI may charge a default rate on the Secondary Loan so long as such rate does not exceed the Maximum Secondary Rate, plus the Maximum Secondary Loan Default Spread.

(e) *Secondary Loan maturity.* The maturity date with respect to the Secondary Loan shall be in accordance with the requirements of the applicable Secondary Loan Requirements. The maturity date of Secondary Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond.

(f) *Secondary Loan collateral.* (1) The Secondary Loan shall be payable from amounts made available pursuant to the Secondary Loan documents, and secured by:

(i) A first lien on the Eligible CDFI on pledged collateral in an amount that is consistent with the loan-to-value ratio requirements set forth in the Secondary Loan Requirements; or

(ii) A Principal Loss Collateral Provision for the benefit of the Master Servicer/Trustee, in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(2) Qualified Secondary Loan Receivables may be used as collateral; provided however, that such collateral is secured by a first lien on the Secondary Loan collateral in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(3) A parity first lien on pledged collateral may be accepted, in the sole discretion of the CDFI Fund.

(g) *Commitments for Secondary Loans.* Each proposed Secondary Loan shall be approved by the credit committee of the Eligible CDFI or its equivalent, in accordance with the applicable Secondary Loan Requirements and the Eligible CDFI's own underwriting requirements.

(h) *Disbursement of Secondary Loan proceeds.* (1) Consistent with the corresponding Bond Loan, Secondary Loans shall be draw-down loans. Disbursements of Secondary Loan proceeds to the Secondary Borrower shall be made pursuant to a requisition process established by the Qualified Issuer and the CDFI Fund and shall mirror the requirements for the disbursement of Bond Proceeds.

(2) Each requisition shall be accompanied by invoices and certifications by the Secondary Borrower as to expenditure of proceeds for Eligible Purposes. The Eligible CDFI must also attest that the Secondary Loan conforms to the requirements set forth in the applicable Secondary Loan Requirements. In the case of Refinancings, the Eligible CDFI must also attest that the original loan was used for an Eligible Purpose.

(3) Secondary Loan proceeds shall be disbursed in accordance with the applicable Secondary Loan Requirements which shall set forth, among other requirements, that Secondary Loan disbursements shall be made in accordance with commercially reasonable standards and timeframes for disbursement based on the nature of the Eligible Purposes. The Secondary Loan Requirements shall also specify what constitutes a commercially reasonable timeframe for disbursement in connection with specific types of Eligible Purposes. Notwithstanding the foregoing, each Eligible CDFI shall propose a timeframe for disbursement in connection with each Secondary Loan, which timeframe shall be subject to the requirements set forth in the Secondary Loan Requirements.

(i) *Amortization of Secondary Loans.* Secondary Loans shall amortize as determined by the Eligible CDFI; provided that Secondary Loan amortization installments shall conform to the requirements of the applicable Secondary Loan Requirements.

(j) *Prepayment of Secondary Loans.* Secondary Loans shall be subject to prepayment as determined by the Eligible CDFI; provided that the Secondary Loan documents may provide for modification of Secondary Loan terms (so long as such modification does not affect the corresponding Bond or Bond Loan) and shall provide for mandatory prepayment of the Secondary Loan from liquidation of collateral upon the exercise of default remedies by the Eligible CDFI, the Qualified Issuer or the Guarantor as required by the Bond, the Bond Loan documents, or the Agreement to Guarantee, as applicable.

(k) *Repayment of Secondary Loans.* As Secondary Loans are repaid, the Eligible CDFI may, through the Relending Fund, Refinance and substitute as collateral for the Bond Loan other loan(s) for Eligible Purposes that meet the required Secondary Loan Requirements, provided that the Eligible CDFI makes Bond Loan payments as required. If the outstanding principal balance of the Bond Loan exceeds the outstanding principal balance of the Bond Loan in use for the Eligible Purposes, the Eligible CDFI shall repay the difference, which shall be deposited in the Relending Account, and credited to the corresponding Relending Subaccount.

§ 1808.308 Relending Fund; Relending Account.

(a) *General.* As Bond Loans are repaid, such amounts in excess of those required for debt service payments on the Bonds may be held in the Relending Account and used for additional Secondary Loans, to the extent authorized in this section.

(b) *Application of funds to Secondary Loans.* Amounts on deposit in the Relending Account shall be applied by the Eligible CDFI to make additional Secondary Loans, the term of which shall not exceed the maturity of the Bond.

(c) *Requirements of Secondary Loans from Relending Account.* Secondary

Loans made from the Relending Account shall meet all the requirements of the Secondary Loan Requirements, and conform to the following additional conditions:

(1) The Qualified Issuer has received and approved a Bond Loan commitment request submitted by the Eligible CDFI;

(2) No material event has occurred and is continuing or is threatened at the Eligible CDFI level or Qualified Issuer level that adversely affects the Eligible CDFI, the Bond or the Bond Loan;

(3) No Eligible CDFI event of default has occurred and is continuing with respect to the Bond Loan;

(4) No Qualified Issuer event of default has occurred and is continuing with respect to the Bond;

(5) There exists no unreplenished draw on the Risk-Share Pool Fund by the Eligible CDFI;

(6) The maturity of Secondary Loans made from the Relending Fund shall not extend beyond the maturity date of the corresponding Bond; and

(7) Any other conditions set forth in this interim rule, the applicable Notice of Guarantee Availability, the Secondary Loan Requirements or the Bond Loan documents.

(d) *Relending Subaccounts.* The balance of each subaccount of the Relending Fund (each a Relending Subaccount) shall not equal more than 10 percent of the principal amount outstanding of the Bond Loan, minus the prorata share of the Risk-Share Pool, as of the Calculation Date (the Relending Subaccount Maximum).

(e) *Notification Date.* For purposes of this section, Notification Date means the date on which the Master Servicer/Trustee notifies the Eligible CDFI that the balance in the applicable Relending Subaccount exceeds the applicable Relending Subaccount Maximum. Calculation Date means, following the Notification Date, the earlier of:

(1) The date on which the balance in such Relending Subaccount becomes less than or equal to the applicable Relending Subaccount Maximum, or

(2) Six months following the Notification Date.

(f) *Mandatory redemption.* Any amounts retained in the Relending

§ 1808.309

Subaccount that exceeds the Relending Subaccount Maximum by \$100,000 or more as of the applicable Calculation Date shall be transferred to the Redemption Account of the Debt Service Fund (as defined in §1808.606(f)) to effectuate a mandatory redemption of the corresponding Bond in accordance with the terms of the Bond Trust Indenture. The determination of the actual amount on deposit on any Calculation Date shall exclude amounts then obligated pursuant to any executed promissory notes, whether then disbursed or undisbursed.

§ 1808.309 Restrictions on uses of Bond Proceeds and Bond Loan proceeds.

Pursuant to 12 U.S.C. 47123a(c)(5), Bond Loan proceeds shall not be used for:

- (a) Political activities;
- (b) Lobbying, whether directly or through other parties;
- (c) Outreach;
- (d) Counseling services;
- (e) Travel expenses;
- (f) For the salaries or administrative costs of the Qualified Issuer or any recipients of Bond Proceeds, other than those costs covered by Bond Issuance Fees;
- (g) To fund the Risk-Share Pool;
- (h) To pay fees other than Bond Issuance Fees; or
- (i) Any other use as may be specified in the applicable Notice of Guarantee Availability.

Subpart D—Applications for Guarantee and Qualified Issuer

§ 1808.400 Notice of Guarantee Availability.

Interested parties will be invited to submit Qualified Issuer Applications and Guarantee Applications in accordance with this interim rule and the applicable Notice of Guarantee Availability. The NOGA will set forth application and eligibility requirements for an entity that wishes to be designated as a Qualified Issuer (including, in the CDFI Fund's sole discretion, the Designated Bonding Authority) and a Qualified Issuer that wishes to be approved to receive a Guarantee. The NOGA may also contain eligibility requirements, application procedures,

12 CFR Ch. XVIII (1–1–16 Edition)

and additional terms and conditions for entities wishing to serve as Servicers, Program Administrators, and other roles as may be determined by the CDFI Fund. The NOGA will advise interested parties on how to apply and will establish criteria, deadlines, and other Qualified Issuer and Guarantee Application requirements, including specifying any additional terms and conditions, limitations, special rules, procedures, and restrictions for a given application period.

§ 1808.401 Application requirements.

(a) *Qualified Issuer Application.* A Qualified Issuer applicant shall provide all required information in its Qualified Issuer Application to establish that it meets all criteria for designation as a Qualified Issuer and can carry out all Qualified Issuer responsibilities and requirements including, but not limited to, information that demonstrates that the applicant has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes. After receipt of a Qualified Issuer Application, the CDFI Fund may request additional information and clarifying or technical information on the materials submitted as part of the Qualified Issuer Application. The CDFI Fund will provide the template for the Qualified Issuer Application.

(b) *Guarantee Application.* (1) A Qualified Issuer shall provide all required information in its Guarantee Application to establish that it meets all criteria set forth in this interim rule to receive a Guarantee and can carry out all Guarantee requirements including, but not limited to, information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes. The Guarantee Application shall include a Capital Distribution Plan and a Secondary Capital Distribution Plan for each potential Eligible CDFI, as well as any other requirements set forth in the applicable Notice of Guarantee Availability or as may be required by the CDFI Fund in its sole discretion for the evaluation and selection of Guarantee

applicants. After receipt of a Guarantee Application, the CDFI Fund may request additional information and clarifying or technical information on the materials submitted as part of the Guarantee Application. The CDFI Fund will provide the template for the Guarantee Application.

(2) The Capital Distribution Plan shall include, but not be limited to, the following information:

(i) Statement of Proposed Sources and Uses of Funds;

(ii) For the Qualified Issuer and each Certified CDFI seeking a Bond Loan, an organizational capacity statement, a plan that describes how the proposed Bond Loan will meet Eligible Purposes, and a description of Credit Enhancement, if any;

(iii) A Secondary Capital Distribution Plan, if applicable; and

(iv) Assurances and certifications that not less than 100 percent of the principal amount of Bonds will be used to make Bond Loans for Eligible Purposes beginning on the Bond Issue Date, and that Secondary Loans shall be made as set forth in subsection 1808.307(b).

Subpart E—Evaluation and Selection

§ 1808.500 Evaluation of Qualified Issuer Applications.

(a) *General.* Each Qualified Issuer Application will be evaluated by the CDFI Fund and, if acceptable, the applicant will be designated as a Qualified Issuer, at the sole discretion of the CDFI Fund. The Qualified Issuer Application review and evaluation process will be based on established standard operating procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the application review process, the CDFI Fund will evaluate Qualified Issuer applicants on a merit basis and in a fair and consistent manner. Each Qualified Issuer applicant will be reviewed on its ability to successfully implement the activities proposed in its Qualified Issuer Application and carry out the responsibilities of a Qualified Issuer over the life of the Bond. The CDFI Fund will periodically reevaluate the Qualified

Issuer over the life of the Bond to ensure it meets the performance standards over the life of the facilities.

(b) *Eligibility and completeness.* A Qualified Issuer applicant will not be eligible to be designated as a Qualified Issuer if it fails to meet the eligibility requirements described in § 1808.200 of this part and the applicable NOGA, or if it has not submitted complete and timely Qualified Issuer Application materials. The CDFI Fund reserves the right to request additional information from the Qualified Issuer applicant, as the CDFI Fund deems appropriate.

(c) *Substantive review.* When evaluating Qualified Issuer Applications and selecting applicants to be designated as Qualified Issuers, the CDFI Fund will apply the criteria set forth in the Act at 12 U.S.C. 4713a(a)(8), this interim rule, and the applicable NOGA including, but not limited to, the following evaluation factors:

(1) The extent to which the Qualified Issuer Application demonstrates that the applicant possesses the appropriate expertise, capacity and experience, or other qualifications to manage the Bond Issue on the terms and conditions set forth in this interim rule and the applicable NOGA;

(2) The expertise and experience of its Program Administrator and Servicers;

(3) The Qualified Issuer applicant's demonstrated performance of financially sound business practices relative to the industry norm for bond issuers, as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, and/or auditors;

(4) Information that demonstrates the applicant, its Program Administrator and Servicers have the appropriate expertise, capacity, and experience or otherwise be qualified to originate, underwrite, service and monitor loan portfolios that serve Eligible Purposes and are targeted toward Low-Income and Underserved Rural Areas; and

(5) Such other criteria that the CDFI Fund deems appropriate for purposes of evaluating the merits of a Qualified Issuer Application.

§ 1808.501 Evaluation of Guarantee Applications.

(a) *General.* After being designated as a Qualified Issuer, the Qualified Issuer may submit a Guarantee Application, seeking authority to issue Bonds and receive a Guarantee on the proposed Bond Issue. A successful Guarantee Application must:

(1) Demonstrate that the Qualified Issuer and the proposed Eligible CDFIs have a feasible plan to successfully repay the Bond (including principal, interest, and call premium) and Bond Loans according to their respective terms, to the satisfaction of the CDFI Fund; and

(2) Meet any other requirements deemed appropriate by the CDFI Fund and the Guarantor.

(b) *Eligibility and completeness.* A Qualified Issuer will not be eligible to receive a Guarantee if it fails to meet the eligibility requirements set forth in § 1808.200 of this part and the applicable NOGA, or if it has not submitted complete and timely Guarantee Application materials. The CDFI Fund reserves the right to request additional information from the Qualified Issuer, or to reject a Guarantee Application as the CDFI Fund may deem appropriate.

(c) *Substantive review.* In evaluating Guarantee Applications and selecting a Qualified Issuer to receive a Guarantee, the CDFI Fund and the Guarantor will apply the criteria set forth in this interim rule and the applicable NOGA including, but not limited to, the following evaluation factors:

(1) The extent to which the Guarantee Application proposes strategies that demonstrate the Qualified Issuer's ability to implement the Capital Distribution Plan;

(2) The adequacy of proposed risk mitigation provisions designed to protect the financial interests of the Federal Government based on information that includes, but is not limited to: the amount and quality of any Credit Enhancements; the amount and quality of any other financial resources to be pledged or risk mitigation to be provided by an Affiliate to the Eligible CDFI through its management structure, that will assume limited obligation for the Bond Loan and enhance the Eligible CDFI's creditworthiness

and its ability to repay the Bond Loan; and the provision for an orderly retirement of principal;

(3) The extent to which the Guarantee Application demonstrates that the Qualified Issuer possesses the appropriate expertise, capacity and experience, or other qualifications to manage the Bond Issue on the terms and conditions set forth in this interim rule and the applicable NOGA;

(4) The Qualified Issuer's demonstrated performance of financially sound business practices relative to the industry norm for bond issuers, as evidenced by financial audits and reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, independent regulators, or auditors;

(5) Information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience or is otherwise qualified to make, service and monitor Bond Loans;

(6) The extent to which the proposed Bond Loans are likely to serve Low-Income Areas or Underserved Rural Areas; and

(7) Such other criteria that the CDFI Fund and the Guarantor deem appropriate for purposes of evaluating the merits of a Guarantee Application.

§ 1808.502 Evaluation of Designated Bonding Authority Applications.

In addition to the evaluation criteria for Qualified Issuers set forth above, DBA applicants must demonstrate the existence of resources to perform functions of the DBA as set forth in section 1808.201 and meet any other criteria set forth in the applicable NOGA and that may be required by the CDFI Fund.

§ 1808.503 Consultation with Appropriate Regulatory Agencies.

In the case of any CDFI Bond Guarantee Program applicant that is a Federally regulated financial institution (or an Affiliate thereof), the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to designating the applicant as a Qualified Issuer, Servicer, Master Servicer/Trustee, Program Administrator or other role, making a final Guarantee commitment, issuing a Guarantee, and/or

entering into an Agreement to Guarantee. The CDFI Fund also reserves the right, in its sole discretion, to consult with the Appropriate Federal Banking Agency and Appropriate State Agency with respect to any Eligible CDFI that is proposed to receive a Bond Loan or any Secondary Borrower that is proposed to receive a Secondary Loan.

§ 1808.504 Selection of Qualified Issuers; Approval for Guarantee.

(a) *General.* Designation of an applicant as a Qualified Issuer shall be based on the foregoing evaluation criteria and processes, and any other requirements or processes that may be set forth in the applicable NOGA. An applicant may simultaneously apply for Qualified Issuer designation and a Guarantee; however, the entity must be designated as a Qualified Issuer before being selected to receive a Guarantee.

(b) The Guarantor will determine whether a Qualified Issuer will be authorized to issue Bonds and receive a Guarantee based on the foregoing evaluation criteria and processes, and any other requirements or processes set forth in the applicable NOGA.

(1) Not later than 30 days after receipt of a complete Guarantee Application (or 30 days after designation as a Qualified Issuer, if submitting simultaneous applications) by a Qualified Issuer, the CDFI Fund shall provide an internal Department Opinion regarding compliance by the Qualified Issuer with the requirements of the CDFI Bond Guarantee Program.

(2) The Guarantor shall approve or deny a Guarantee Application no later than 90 days after receipt of a complete Guarantee Application, and all other required information by the CDFI Fund or the Guarantor with respect to a request for such Guarantee.

(c) The Guarantor may limit the number of Guarantees made per year or Guarantee Applications accepted to ensure that a sufficient examination of Guarantee Applications is conducted.

(d) The CDFI Fund shall notify the Qualified Issuer in writing of the Guarantor's approval or disapproval of a Guarantee Application.

(e) The Guarantor reserves the sole discretion to approve a Guarantee Ap-

plication for a Guarantee amount that is less than that which is requested.

(f) In the event that there are material changes after submission of a Guarantee Application (including, but not limited to, a revision of the Capital Distribution Plan or a change in the Certified CDFIs that are proposed for receiving Bond Loans) prior to or after the designation as a Qualified Issuer or approval of a Guarantee Application or Guarantee, the Qualified Issuer or Guarantee applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The Guarantor will evaluate such material changes, along with the Guarantee Application, to approve or deny the Guarantee Application and/or determine whether to modify the terms and conditions of the Guarantee.

Subpart F—Terms and Conditions of Guarantee

§ 1808.600 Full faith and credit and incontestability of Guarantee.

The full faith and credit of the Federal Government is pledged to the payment of all Bonds issued as part of a Bond Issue with respect to Verifiable Losses of Principal, Interest, and Call Premium. An executed Guarantee shall be conclusive evidence that: the Guarantee has been properly authorized; the underlying Bond qualified for such Guarantee; and, but for fraud or material misrepresentation, such Guarantee will be presumed to be legally valid, binding, and enforceable.

§ 1808.601 Assignment and transfer of Guarantee.

The Guarantee shall be fully assignable and transferrable to the capital markets, on terms and conditions that are consistent with comparable bonds guaranteed by the Federal Government and satisfactory to the Guarantor and the CDFI Fund.

§ 1808.602 Offer of Guarantee.

Upon approval of the Guarantee Application, the Qualified Issuer will receive from the Guarantor an offer of Guarantee that will set forth certain required terms and conditions to be fulfilled prior to issuance of the Guarantee.

§ 1808.603

12 CFR Ch. XVIII (1–1–16 Edition)

§ 1808.603 Issuance of Guarantee.

(a) *Conditions precedent.* The commitment of the Guarantor to issue a Guarantee shall be subject to conditions precedent that are usual and customary for financings of this type or otherwise deemed appropriate by the Guarantor including, but not limited to, the following:

(1) The conditions precedent to the Bond Issue and the making of the Bond Loan have been satisfied, including a credit review that indicates a reasonable prospect of repayment as demonstrated by the CDFI Fund's analysis of the cash flow and collateral provisions of the Eligible CDFI;

(2) The Qualified Issuer shall have submitted to the CDFI Fund a complete Guarantee Application, containing all required information relating to the Bond and the Bond Loan, as required by the Guarantor;

(3) There have been no material changes to the Bond and Bond Loan documents from the forms thereof approved by the Guarantor and the CDFI Fund;

(4) The Bond Purchaser and the Qualified Issuer shall have executed a Bond Purchase Agreement; and

(5) Such additional information or documents as may be required by the CDFI Fund, the Guarantor, or the Bond Purchaser.

(b) *Rescission of approval.* The Guarantor, in its sole discretion, may rescind its approval of a Guarantee Application if:

(1) The Guarantor or the CDFI Fund determines that the Qualified Issuer cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer of Guarantee, or

(2) The Guarantor or the CDFI Fund determines, in its sole discretion, that the Qualified Issuer no longer meets applicable CDFI Bond Guarantee Program criteria and requirements.

§ 1808.604 Agreement to Guarantee.

(a) *General.* The Qualified Issuer must enter into an Agreement to Guarantee that sets forth the terms and conditions on which the Guarantor will provide the Guarantee of the Bonds issued as part of a Bond Issue.

(b) *Terms and conditions.* The terms and conditions of the Agreement to Guarantee may include, but are not limited to, the following:

(1) The form and amount of Guarantee;

(2) Any prohibited amendments of Bond Documents or limitations on transfer of the Guarantee;

(3) Terms and conditions of the Risk-Share Pool and any Credit Enhancement that may be required by the CDFI Fund and the Guarantor;

(4) Provisions regarding the Agency Administrative Fee;

(5) Representations and warranties of the Qualified Issuer;

(6) Pledged security;

(7) Financial covenants;

(8) Events of default and remedies;

(9) Assignment of Bond Loans to the Guarantor;

(10) Guarantor payment does not discharge Qualified Issuer; subrogation;

(11) Undertakings for the benefit of the Bondholder including: notices, registration, prohibited amendments, prohibited transfers, and indemnification;

(12) Governing law;

(13) Terms and conditions of Bond Loans;

(14) Prohibition against subordination; and

(15) Such other matters as the Guarantor or the CDFI Fund may deem necessary or appropriate.

(c) *Access to funds.* In the event that the Qualified Issuer does not execute Bond Loan agreements for 100 percent of the Bond principal on the Bond Issue Date, the Qualified Issuer will have no further access to the amount of funds for which Bond Loan agreements were not executed.

§ 1808.605 Agency Administrative Fee.

The Qualified Issuer shall pay the CDFI Fund annually a fee equal to 10 basis points (0.1 percent) of the amount of the unpaid principal of the Bond(s). The initial Agency Administrative Fee must be paid in full as a condition to closing any Agreement to Guarantee, no later than the effective date of the Agreement to Guarantee.

§ 1808.606 Program Administrator; Servicer; Master Servicer/Trustee.

(a) *General.* Bond Loans shall be overseen by qualified Program Administrators, Servicers, and a Master Servicer/Trustee. For purposes of maximizing efficiencies and minimizing costs, Program Administrator and Servicer duties may be consolidated and performed by Qualified Issuers.

(b) *Program Administrator— (1) Duties.* The duties of a Program Administrator, which may be performed by the Qualified Issuer, shall include, but not be limited to:

(i) Approving and qualifying Eligible CDFI applications for participation in the Guarantee Application;

(ii) Bond and Bond Loan packaging;

(iii) Reviewing and approving Secondary Loan commitments from Eligible CDFIs for funds from the Bondholder or the Relending Account based on the Secondary Loan Requirements;

(iv) Compliance monitoring of Bond Loans and Secondary Loans;

(v) Preparing and submitting reports required by this interim rule; and

(vi) All other duties and related services that are customarily expected of a Program Administrator, and as may be required by the CDFI Fund or the Guarantor.

(2) *Selection.* There shall be one Program Administrator for each Bond Issue. The Qualified Issuer applicant shall provide, in its Qualified Issuer Application, information on its proposed Program Administrator that demonstrates the appropriate expertise, capacity and experience, as well as any additional information that may be required to meet the criteria set forth in the applicable Notice of Guarantee Availability, including, but not limited to, information on the entity's management and organization, loan administration, and financial capability.

(3) *Fees and expenses.* The Program Administrator's administrative fees and expenses shall be paid by the Eligible CDFI in accordance with applicable financing documents.

(c) *Servicer— (1) Duties.* The duties of a Servicer, which may be performed by the Qualified Issuer, shall include, but not be limited to:

(i) Billing and collecting Bond Loan payments from Eligible CDFIs;

(ii) Initiating collection activities on past-due Bond Loans;

(iii) Transferring Bond Loan payments to the respective funds and accounts managed by the Master Servicer/Trustee;

(iv) Bond Loan administration and servicing;

(v) Systematic and timely reporting of Bond Loan performance through remittance and servicing reports, and providing such reports as may be required by this interim rule;

(vi) Proper measurement of annual outstanding Bond Loan requirements; and

(vii) All other duties and related services that are customarily expected of Servicers, and as may be required by the CDFI Fund or the Guarantor.

(2) *Selection.* There shall be one Servicer for each Bond Issue. Each Qualified Issuer applicant shall provide, in its Qualified Issuer Application, information on its proposed Servicer that demonstrates the appropriate expertise, capacity and experience, as well as any additional information that as may be required to meet the criteria set forth in the applicable Notice of Guarantee Availability including, but not limited to, information on the entity's management and organization, loan servicing, and financial capability.

(3) *Fees and expenses.* The Servicer's administrative fees and expenses for each Bond Issue shall be paid by the associated Eligible CDFIs in accordance with applicable financing documents.

(d) *Special Servicer— (1) Duties.* The duties of the Special Servicer shall be performed by the Master Servicer/Trustee and shall include, but not be limited to:

(i) Negotiating the restructuring of Bond Loans that are in or about to enter into an event of Default;

(ii) Initiating foreclosure action and appointing a receiver; and

(iii) Enforcing deficiency judgments.

(2) *Evaluation.* The Master Servicer/Trustee applicant shall provide, in its Master Servicer/Trustee application, information on its proposed Special Servicer capabilities and experience. These capabilities may be performed

by the Master Servicer/Trustee or an entity designated by the Master Servicer/Trustee. The CDFI Fund shall evaluate the Master Servicer/Trustee applicant's or its designee's ability to perform the duties of Special Servicer based on the capacity and experience in the following areas:

- (i) Restructuring, recovery, and foreclosure of loans that are similar to Bond Loans;
- (ii) Financial strength and capacity;
- (iii) Managing regional or national intake, processing, or servicing operational systems and infrastructure of loans that are similar to Bond Loans;
- (iv) Managing regional or national originator communication systems and infrastructure;
- (v) Developing and implementing training and other risk management strategies on a regional or national basis;
- (vi) Compliance monitoring and reporting; and
- (vii) Such other criteria that may be required by the CDFI Fund.

(3) *Fees and expenses.* The Bond Trust Indenture will outline the Special Servicer's administrative fees and expenses; these fees shall be paid by the Eligible CDFI in accordance with the Bond Trust Indenture and related documents.

(e) *Master Servicer/Trustee—(1) Duties.* The duties of the Master Servicer/Trustee shall include, but not be limited to:

- (i) The fiduciary power to enforce the terms of Bonds and the Bond Loans pursuant to the Bond Trust Indenture;
- (ii) Establishing and managing the funds and accounts set forth in this interim rule;
- (iii) Providing such reports as required;
- (iv) Overseeing the activities of Servicers and managing loan administration;
- (v) Servicing and monitoring of Bond Issues with respect to repayment obligations to the Bondholder and the terms of the Agreement to Guarantee;
- (vi) Tracking the movement of funds between the accounts of the Master Servicer/Trustee and all Servicers;
- (vii) Ensuring orderly receipt of the monthly remittance and servicing reports of the Servicers;

(viii) Monitoring collection and foreclosure actions;

(ix) Aggregating the reporting and distribution of funds to the Qualified Issuer, CDFI Fund, and the Bondholder, as necessary;

(x) Removing and replacing Servicers, as necessary;

(xi) Performing systematic and timely reporting of Bond Loan performance compiled from Servicers' reports, and providing such reports as required in this interim rule;

(xii) Ensuring proper distribution of funds to Eligible CDFIs, servicing the Bonds, and repayment to the Bondholder; and

(xiii) All other duties and related services that are customarily expected of a Master Servicer/Trustee, and as may be required by the CDFI Fund.

(2) *Selection.* There shall be one Master Servicer/Trustee for the CDFI Bond Guarantee Program. The CDFI Fund shall solicit applications and make a selection of a Master Servicer/Trustee based on the capacity and experience of the applicant in the areas set forth in paragraph (a)(1) of this section and in the following paragraphs (a)(2)(i) through (vi):

(i) Administration, servicing, and monitoring of loans that are similar to Bond Loans;

(ii) Financial strength and capacity;

(ii) Managing regional or national intake, processing, or servicing operational systems and infrastructure of loans that are similar to Bond Loans;

(iii) Managing regional or national originator communication systems and infrastructure;

(iv) Developing and implementing training and other risk management strategies on a regional or national basis;

(v) Compliance monitoring and reporting; and

(vi) Such other criteria that may be required by the CDFI Fund.

(3) *Fees and expenses.* The Master Servicer/Trustee's administrative fees and expenses shall be paid by the Eligible CDFI in accordance with the Bond Trust Indenture and related documents.

(f) *Funds and accounts.* The following funds shall be established by the Master Servicer/Trustee at the time of execution of the Bond Trust Indenture, on behalf of the Qualified Issuer and for the benefit of the Bondholder. On the Bond Issue Date, separate accounts shall be established therein for each Bond and, furthermore, within each account there shall be established a subaccount for each Bond Loan on the date of the closing of each Bond Loan:

(1) The Project Fund, and therein a Project Account for each Bond: All disbursements of Bond Proceeds from the Bondholder pursuant to the requisition processes shall be deposited in the applicable Project Account or Subaccount, and the Master Servicer/Trustee shall disburse advances with respect to the Bond Loan to the Eligible CDFI therefrom;

(2) The Revenue Fund, and therein a Revenue Account for each Bond: All payments of debt service or prepayments on the Bond Loan pursuant to the Bond Loan documents, other payments by the Eligible CDFI pursuant to the Bond Loan documents, and any investment income derived from the corresponding accounts or subaccounts in the Debt Service Fund shall be deposited in the accounts and subaccounts of the Revenue Fund;

(3) The Debt Service Fund, and therein an Interest Account, a Principal Account and a Redemption Account for each Bond: Not later than 30 days prior to a Bond payment date, the Master Servicer/Trustee shall make the following transfers from the applicable account or subaccount of the Revenue Fund:

(i) All scheduled payments (amortization installments or at maturity) of principal received from the Eligible CDFI on the Bond Loan shall be transferred to the Principal Account or Subaccount;

(ii) All scheduled payments (amortization installments or at maturity) of interest received from the Eligible CDFI on the Bond Loan shall be transferred to the Interest Account or Subaccount; and

(iii) All prepayments of principal, interest and premium, if any, received from the Eligible CDFI on the Bond

Loan shall be transferred to the Redemption Account or Subaccount;

(4) The Administrative Fees Fund, and therein an Administrative Fees Account for each Bond: All fees necessary for administering and servicing the Bond or the Bond Loan (including the Agency Administrative Fee and Bond Issuance Fees), payable by the Eligible CDFI pursuant to the Bond Loan documents, shall be deposited in the applicable account or subaccount of the Administrative Fees Fund and, thereafter, shall be disbursed by the Master Servicer/Trustee to the subject recipient in accordance with the terms of each such payment;

(5) The Risk-Share Pool Fund, and therein a Risk-Share Pool Account for each Bond, in accordance with §1808.303 of this part;

(6) The Relending Fund, and therein a Relending Account for each Bond, in accordance with §1808.308 of this part; and

(7) Such other funds and accounts as may be required by the CDFI Fund and the Qualified Issuer in connection with a Bond Issue, Bond or Bond Loan.

(g) *Other funds and accounts.* The Master Servicer/Trustee shall be permitted to establish such other funds and accounts as deemed necessary to administer the requirements of the Bond Trust Indenture. Each account shall be designated by the name of the applicable Bond and each subaccount shall be designated by the name of the applicable Bond Loan.

(h) *No commingling of funds.* No commingling of monies shall be permitted between accounts or subaccounts.

(i) *Permitted investments.* Monies on deposit in the Revenue Fund, the Debt Service Fund, the Risk-Share Pool Fund, the Relending Fund, if invested, shall be invested in U.S. Treasury securities with maturities that do not exceed the dates on which monies will be required for anticipated purposes and may be sold to the extent funds are needed sooner than anticipated. All interest shall be credited to the relevant account in the relevant fund.

EDITORIAL NOTE: At 78 FR 8310, Feb. 5, 2013, part 1808 was added with two paragraphs (e)(2)(ii) in §1808.606.

§ 1808.607

§ 1808.607 Representations and warranties of Qualified Issuer with respect to Guarantee.

The Qualified Issuer shall represent and warrant to the Guarantor, at the execution of any Agreement to Guarantee to which it is a party and thereafter at the closing of any Bond Loan and the issuance of any Bond, the following:

(a) The Qualified Issuer is duly organized, validly existing and in good standing in its State of organization with the power and authority to enter into the agreements and consummate the transactions thereby contemplated;

(b) The information contained in the Qualified Issuer Application is true and correct;

(c) The Bonds, when executed, are and will be duly authorized, executed, valid, binding and enforceable obligations of the Qualified Issuer;

(d) Except as disclosed to the Guarantor, no claim or litigation is pending or threatened which would materially adversely affect the Qualified Issuer's ability to consummate the transactions contemplated by the Agreement to Guarantee, the Bond, or the Bond Loan;

(e) The consummation of the transactions contemplated by the Agreement to Guarantee, the Bond, and the Bond Loan will not conflict with or constitute an event of default under any law or agreement to which the Qualified Issuer is subject;

(f) No authorization, approval or consent of a governmental authority is necessary on the part of the Qualified Issuer to consummate the transactions contemplated by the Bond or the Bond Loan which has not been obtained;

(g) No funds from any other CDFI Fund program are being used to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool; and

(h) Any other representation or warranty deemed appropriate by the Guarantor, the CDFI Fund or the Bond Purchaser.

12 CFR Ch. XVIII (1-1-16 Edition)

§ 1808.608 Representations and warranties of Eligible CDFI with respect to each Bond Loan.

The Eligible CDFI shall represent and warrant to the Qualified Issuer, at the execution of each set of Bond Loan documents and, thereafter, until repayment in full of such Bond Loan, the following:

(a) The performance by the Eligible CDFI under the Bond Loan documents is duly authorized, does not require consent or approval of any governmental authority not already obtained, does not constitute a default of any law or agreement to which the Eligible CDFI is subject, will not result in the imposition of any lien (other than pursuant to the Bond Loan), and constitutes a valid, binding and enforceable obligation of the Eligible CDFI;

(b) The information provided by the Eligible CDFI fairly represents the financial position (in conformity with generally accepted accounting principles), experience and capacity of the Eligible CDFI, and there have been no material adverse changes in the Eligible CDFI's financial condition since the date of such financial information;

(c) No claim or litigation is pending or threatened which would materially adversely affect the Eligible CDFI's ability to consummate the transactions contemplated by the Bond Loan, or repay the Bond Loan;

(d) No event of default or other material event which could become an event of default has occurred and is continuing;

(e) The Eligible CDFI has filed all Federal, State and local tax returns required and paid all liabilities in connection therewith;

(f) The Eligible CDFI has good and marketable title to the collateral;

(g) The Bond Loan will be applied to Eligible Purposes;

(h) The information provided in the Guarantee Application is true and accurate;

(i) No default, event of default or due and unsatisfied liability has occurred and is continuing with respect to any obligations of the Eligible CDFI to the Guarantor, the CDFI Fund, the Bond Purchaser, the U. S. Internal Revenue Service, or any other agency, authority

or instrumentality of the Federal Government;

(j) No funds from any other CDFI Fund program are being used to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool; and

(k) Any other representations and warranties set forth in the Bond Loan documents.

§ 1808.609 Representations and warranties of Secondary Borrower.

Each Secondary Borrower shall make identical representations and warranties as the Eligible CDFI and shall make specific representations and warranties with respect to the collateral and the project that is proposed to be financed by the Secondary Loan, upon which the Eligible CDFI, the Qualified Issuer, the Bondholder, the Guarantor, and the CDFI Fund may rely. These representation and warranties shall be to the satisfaction of the Guarantor and the CDFI Fund.

§ 1808.610 Covenants of Qualified Issuer with respect to Guarantee.

The Qualified Issuer shall covenant in the Agreement to Guarantee that it will:

(a) Furnish to the CDFI Fund, at the Qualified Issuer's expense, all annual and periodic financial reporting as described in § 1808.619 of this part;

(b) Maintain books and records related to each Bond Loan, the collateral and the project that is to be financed by Bond Proceeds, and allow inspection thereof;

(c) Preserve its corporate existence and Certified CDFI status, if applicable;

(d) Comply with all laws to which it is subject;

(e) Maintain its solvency;

(f) To the extent it assigns any of its obligations under the agreement to an Affiliate, guarantee performance of such obligations;

(g) Allow audits and investigations by the CDFI Fund, the Treasury Inspector General, the Comptroller General, or such other Federal Government offices as may be designated by the Guarantor or the CDFI Fund;

(h) Provide such reports as required in § 1808.619 of this part;

(i) Make, execute and deliver such instruments as the Guarantor or the CDFI Fund may reasonably request;

(j) Sign and certify as true and correct all Bond Documents and Bond Loan documents;

(k) Not amend or modify any agreement related to the Bond without the consent of the Bondholder, the Guarantor, or the CDFI Fund, as applicable;

(l) Comply with the terms and conditions of the Agreement to Guarantee, the Bond Trust Indenture, and the Bond and Bond Loan documents;

(m) Immediately notify the Guarantor and the CDFI Fund of any material change or event that affects any representation, warranty or covenant of the Guarantee, Bond or Bond Loan documents;

(n) Pay and discharge all Federal, State and local taxes; and

(o) Comply with all other covenants set forth in the Bond Documents and Bond Loan documents.

§ 1808.611 Covenants of Eligible CDFI with respect to Bond and each Bond Loan.

The Eligible CDFI shall covenant in the Bond Loan agreement that it will:

(a) Furnish to the Qualified Issuer, at the Eligible CDFI's expense, certain annual and periodic financial and performance reporting;

(b) Maintain books and records related to the Bond Loan and Secondary Loans, the collateral and the project that is to be financed by Bond Loan proceeds, and allow inspection thereof;

(c) Preserve its corporate existence and Certified CDFI status;

(d) Comply with all laws to which it is subject;

(e) Maintain insurance, as required by the Qualified Issuer, against such risks as would customarily be maintained by commercially reasonable companies in a similar line of business;

(f) Pay and discharge all Federal, State and local taxes;

(g) Ensure proper use of proceeds of the Bond Loan;

(h) Pay all required administrative expenses;

(i) Indemnify the Guarantor, the CDFI Fund, the Qualified Issuer and

§ 1808.612

the Master Servicer/Trustee and their Affiliates;

(j) Collaterally assign all rights, title, and interest in and to Secondary Loan collateral to the Master Servicer/Trustee;

(k) Maintain the collateral;

(l) Enforce the covenants against the Secondary Borrowers;

(m) Be bound, to the extent applicable, to provisions of the Bond Trust Indenture;

(n) Periodically, as directed by the CDFI Fund, furnish certain information designed to measure the impacts of the Bond Loan and the CDFI Bond Guarantee Program;

(o) Periodically, as directed by the CDFI Fund, furnish to the Qualified Issuer and/or the CDFI Fund updates to the Capital Distribution Plan; and

(p) Comply with all other representations and warranties set forth in the Bond Loan documents.

§ 1808.612 Specific financial covenants of Eligible CDFI.

The Eligible CDFI shall covenant in Bond Loan documents that it will comply with specific financial requirements as required by the Guarantor and the CDFI Fund. Such financial requirements will be determined based upon the quantity and the character of the existing loan facilities of the Eligible CDFI, among other factors. The specific financial covenants may include, but are not limited to, one or more of the following measures: consolidated net asset ratio; consolidated unrestricted net asset ratio; and minimum available liquidity (or, in the case of Eligible CDFIs that are regulated financial institutions, such ratios and information as may be required by the applicable Appropriate Federal Banking Agency or Appropriate State Agency). The specific financial requirements shall be measured based upon such Eligible CDFI's financial statements prepared in accordance with generally accepted accounting principles and consistent with historically applied accounting policies and practices.

12 CFR Ch. XVIII (1-1-16 Edition)

§ 1808.613 Negative covenants of Eligible CDFI.

The Eligible CDFI will covenant in Bond Loan documents that it will comply with certain negative covenants, as required by the CDFI Fund including, but not limited to, that it will:

(a) Not incur or issue additional long-term or short-term debt to the extent that the incurrence of such additional debt would violate the specific financial covenants of such Eligible CDFI under the Bond Loan; and

(b) Not permit liens on all or any part of the Bond Loan collateral, except as permitted pursuant to the Bond Loan documents, and only then to the extent consistent with the applicable laws and regulations governing the Bond Loan and as approved by the CDFI Fund.

§ 1808.614 Covenants of Secondary Borrower with respect to Secondary Loan.

In addition to making specific representations and warranties with respect to the collateral and the project being financed by the Secondary Loan proceeds, each Secondary Borrower shall covenant in the Secondary Loan agreement that it will:

(a) Periodically, as directed by the Eligible CDFI, furnish to the Eligible CDFI certain annual and periodic financial and performance reporting;

(b) Maintain books and records related to the Secondary Loan, the collateral and the project that is to be financed by Bond Loan proceeds, and allow inspection thereof;

(c) Preserve its corporate existence, as applicable;

(d) Comply with all laws to which it is subject;

(e) Maintain insurance, as directed by the Eligible CDFI, against such risks as would customarily be maintained by commercially reasonable companies in a similar line of business;

(f) Pay and discharge all Federal, State and local taxes;

(g) Ensure proper use of proceeds of the Secondary Loan;

(h) Maintain the collateral;

(i) Periodically, as directed by the Eligible CDFI, furnish to the Eligible CDFI certain information designed to measure the impacts of the Bond Loan

and the CDFI Bond Guarantee Program; and

(j) Comply with all other representations and warranties set forth in the Secondary Loan documents.

§ 1808.615 Negative covenants of Secondary Borrower.

Any additional debt of the Secondary Borrower shall be in accordance with the requirements set forth in the applicable Secondary Loan Requirements and the Secondary Loan agreement, and may include, but shall not be limited to, that:

(a) The Secondary Borrower will not incur or issue additional long-term or short-term debt payable from and having a lien on all or a portion of the Secondary Loan collateral that is

(1) Equally and ratably secured; or

(2) Superior or senior to the lien thereon of the Secondary Loan as more specifically set forth in the Secondary Loan agreement; and

(b) So long as no event of default has occurred and is continuing, the Secondary Borrower may, subject to the approval of the Eligible CDFI, incur or issue at any time additional debt payable from and having a lien on all or a portion of the Secondary Loan collateral that is subordinate or junior to the lien thereon of the Secondary Loan and enter into subordinate credit facility agreements, provided that no events of default have occurred and are continuing under the Secondary Loan documents or any parity senior loan documents and that such debt meets the requirements set forth in paragraph (a) of this section.

§ 1808.616 Events of default and remedies with respect to Bonds.

(a) *Events of default.* An event of default with respect to any Bond shall include, but not be limited to:

(1) Nonpayment of interest or the Agency Administrative Fee when due and payable;

(2) Nonpayment of principal or prepayment price when due and payable;

(3) The use of Bond Proceeds for any purpose other than an Eligible Purpose; and

(4) Any other events of default set forth in the Bond or the Bond Trust Indenture.

(b) *Default of other Bonds.* An event of default under one Bond shall not constitute an event of default under another Bond.

(c) *Remedies.* Pursuant to the Agreement to Guarantee and the Bond Trust Indenture, remedies upon an event of default shall include, but not be limited to, the following:

(1) Declaring the entire amount of unpaid principal and interest on the applicable Bond immediately due and payable; and

(2) Exercising all remedies available under the applicable Agreement to Guarantee and the Bond Trust Indenture.

(d) Notice and comment. Prior to imposing any remedies pursuant to this section or the Agreement to Guarantee, the Guarantor shall, to the maximum extent practicable, provide the Qualified Issuer with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Qualified Issuer the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1808.617 Events of default and remedies with respect to Bond Loans.

(a) *Events of default.* The following shall constitute an event of default with respect to each Bond Loan:

(1) Nonpayment of interest when due and payable;

(2) Nonpayment of principal or prepayment price when due and payable;

(3) Failure of the Eligible CDFI to perform any condition or covenant under any Bond Loan document;

(4) Any representation or warranty of the Eligible CDFI made in connection with the Guarantee Application or the Bond Loan is false or incorrect in any material respect;

(5) Principal or interest on any indebtedness of the Eligible CDFI or any subsidiary of the Eligible CDFI in excess of \$100,000 is not paid when due (subject to a cure period);

(6) The holder of any junior or parity lien on collateral institutes a proceeding to enforce a lien on the collateral;

(7) The Eligible CDFI files bankruptcy or consents to the appointment

§ 1808.618

of a receiver or trustee for itself or the collateral;

(8) Any money judgment is filed against the Eligible CDFI and remains unvacated for a period of 60 days from filing;

(9) The use of Bond Loan proceeds for any purpose other than an Eligible Purpose; or

(10) Any other events of default set forth in the Bond Loan documents.

(b) *Remedies.* Remedies of the Qualified Issuer upon an event of default include, but are not limited to, the following:

(1) Declaring the entire amount of unpaid principal and interest on the applicable Bond Loan immediately due and payable;

(2) Applying for appointment of a receiver or trustee for the collateral;

(3) At the direction of the Guarantor, terminating the Bond Loan agreement, declaring the entire amount of unpaid principal and interest on the applicable Bond Loan immediately due and payable; and

(4) Exercising all remedies available under the applicable Bond Loan agreement, including declaring the Bond Loan Payment Default Rate in effect.

(c) *Enforcement rights.* The Guarantor reserves all rights to enforce remedies upon an event of default.

§ 1808.618 Events of default and remedies with respect to Secondary Loans.

(a) *Events of default.* The following shall constitute an event of default with respect to each Secondary Loan:

(1) Nonpayment of interest when due and payable;

(2) Nonpayment of principal when due and payable;

(3) Failure of the Secondary Borrower to perform any condition or covenant under any Secondary Loan document;

(4) Any representation or warranty of the Secondary Borrower made in connection with the Secondary Loan application or the Secondary Loan documents is false or incorrect in any material respect;

(5) Principal or interest on any indebtedness of the Secondary Borrower or any subsidiary of the Secondary Borrower in excess of \$100,000 is not

12 CFR Ch. XVIII (1-1-16 Edition)

paid when due (subject to a cure period);

(6) The holder of any junior or parity lien on collateral institutes a proceeding to enforce a lien on the collateral;

(7) The Secondary Borrower files bankruptcy or consents to the appointment of a receiver or trustee for itself or the collateral;

(8) Any money judgment is filed against the Secondary Borrower and remains unvacated for a period of 60 days from filing; or

(9) Any other events of default set forth in the Secondary Loan documents.

(b) *Remedies.* The Qualified Issuer and the Guarantor will reserve certain rights to enforce (or direct enforcement of) remedies upon an event of default under the Secondary Loan documents.

§ 1808.619 Reporting requirements.

The Bond Documents and Bond Loan documents shall specify such monitoring and financial reporting requirements as deemed appropriate by the CDFI Fund including, but not limited to the following:

(a) *Data—General.* As long as the Bonds remain outstanding, a Qualified Issuer shall provide such reports and shall maintain such records as may be prescribed by the CDFI Fund that are necessary to:

(1) Disclose the manner in which Bond Proceeds are used, including providing documentation to demonstrate proceeds of the Bond Loans were used for Eligible Purposes;

(2) Demonstrate compliance with the requirements of this part and the Bond Documents;

(3) Evaluate the impact of the CDFI Bond Guarantee Program;

(4) Ensure the Qualified Issuer meets the performance standards over the life of the facilities; and

(5) Accomplish such other purposes that the CDFI Fund may deem appropriate.

(b) *Customer profiles.* The Qualified Issuer shall require each Eligible CDFI to compile such data on the gender, race, ethnicity, national origin, or other information on individuals and entities that utilize its products and

services as the CDFI Fund shall prescribe and as is permissible under applicable law. In general, 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 Bond Guarantee Program.

(c) *Audits; Access to records.* (1) The CDFI Fund may, if it deems appropriate, audit Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, and/or the Master Servicer/Trustee, or provide for or require an audit, at least annually. Portfolio management and loan monitoring will also employ risk-based, on-site verification of the Eligible CDFI's lending activities to Secondary Borrowers and compliance with the terms in Secondary Lending Requirements.

(2) Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, the Master Servicer/Trustee, as applicable, must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund to ensure compliance with the requirements of this interim rule and to evaluate the impact of the CDFI Bond Guarantee Program.

(3) The Federal Government, including the U.S. Department of the Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to such entities' offices and facilities and all books, documents, records, and financial statements relating to the Guarantee and may copy such documents as they deem appropriate.

(4) The CDFI Fund, if it deems appropriate, may prescribe audit and access to record requirements for Eligible CDFIs and Secondary Borrowers.

(d) *Retention of records.* Qualified Issuers, Eligible CDFIs, Program Administrators, the Master Servicer/Trustee, and Servicers shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable).

(e) *Data collection and reporting.* Qualified Issuers, Eligible CDFIs, the Program Administrator, the Master Servicer/Trustee, and Servicers, as applicable, shall submit to the CDFI

Fund, monthly, quarterly, and annually, as specified in the Bond Documents, and as long as the Bond shall remain outstanding, such information and documentation that will permit the CDFI Fund to review compliance with the Capital Distribution Plan and the terms and conditions of the Bond Documents, and to perform adequate portfolio management and loan monitoring. The information and documentation may include, but not be limited to, the following:

(1) Financial statements, including but not limited to:

(i) Annual financial statements for the Qualified Issuer and each Eligible CDFI that have been audited in conformity with generally accepted auditing principles; and

(ii) With respect to any nonprofit Qualified Issuer and any Eligible CDFI that is required to have its financial statements audited pursuant to OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations, annual A-133 audited financial statements. Non-profit Qualified Issuers and Eligible CDFIs that are not required to have financial statements audited pursuant to OMB Circular A-133 must submit to the CDFI Fund a statement signed by the Qualified Issuer or Eligible CDFI's authorized representative or certified public accountant, asserting that a single audit pursuant OMB Circular A-133 is not required;

(2) Pro forma projection of the Qualified Issuer's and Eligible CDFI's respective balance sheet, income statement, and statement of cash flows over the ensuing five years, or such other time period as specified by the CDFI Fund;

(3) Such institution-level and transaction-level reports as may be required by the CDFI Fund;

(4) Information necessary to measure the financial condition of the Eligible CDFI. This includes, but is not limited to, measuring solvency by collecting data on fixed charge coverage, capital adequacy, debt coverage, and measuring liquidity by collecting data on core financial ratios, including current ratios, quick ratios, working capital, and operating liquidity ratio. This will also include credit reporting, financial

statement analysis, trend analysis of financial conditions, market valuation, loan performance (30/60/90 payment history) of Bond Loans and Secondary Loans, valuation and eligibility of Secondary Loan collateral, and management and organization changes;

(5) Information necessary to assess Program impact performance and outcome measures, including information necessary to evaluate the credit-worthiness of loan applicants; and

(6) Other such information and reports as may be requested by the CDFI Fund.

(f) *Qualified Issuer reports.* Qualified Issuers are responsible for the timely and complete submission of all required information and reports, even if all or a portion of the documents actually are completed by the Eligible CDFI. The CDFI Fund reserves the right to contact the Qualified Issuer or Eligible CDFI and require that additional information and documentation be provided.

(g) *Regulator information.* The CDFI Fund's review of a regulated Qualified Issuer's or regulated Eligible CDFI's performance or compliance with the Bond Documents may also include information provided by the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(h) *Public inspection.* The CDFI Fund shall make reports described in this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests pursuant to all applicable laws and regulations.

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

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

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

§ 1808.620 Investments in Guaranteed Bonds ineligible for Community Reinvestment Act Purposes.

Notwithstanding any other provision of law, any investment by a financial institution in Bonds shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901). Other forms of participation by financial institutions in CDFI Bond Guarantee Program transactions may be eligible for inclusion in Community Reinvestment Act records to the extent permitted by the Appropriate Federal Banking Agency.

§ 1808.621 Conflict of interest requirements.

(a) *Provision of Bond Loans or Secondary Loans to Affiliates.* (1) A Qualified Issuer or Eligible CDFI that is not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency may not use any Bond Proceeds or Bond Loan proceeds to make any Bond Loans or Secondary Loans available to an Affiliate unless it meets the following restrictions:

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

(ii) The Affiliate receiving the loan shall not participate in any way in the decision-making regarding such loan;

(iii) The board of directors or other governing body of the lender shall approve the extension of the loan; and

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

(2) A Qualified Issuer or Eligible CDFI that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union (as such terms are defined in 12 CFR 1805.104) shall comply with the restrictions on insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b) *Standards of conduct.* Qualified Issuers, Eligible CDFIs, Program Administrators, the Master Servicer, and Servicers shall maintain a code or standards of conduct acceptable to the CDFI Fund that govern the performance of employees engaged in the

awarding and administration of any loan. No employee of a Qualified Issuer, Eligible CDFI, Program Administrators, the Master Servicer, and Servicer shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers for such loans. Such policies shall provide for disciplinary actions to be applied for violation of the standards by employees.

§ 1808.622 Compliance with government requirements.

In carrying out its responsibilities pursuant to any agreements associated with the CDFI Bond Guarantee Program, all Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, and the Master Servicer/Trustee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders, including restrictions on lending to entities with delinquent Federal debt.

§ 1808.623 Lobbying restrictions.

No fees or funds made available under this part may be expended by a party 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.

§ 1808.624 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all CDFI Bond Guarantee Program participants and insiders.

§ 1808.625 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control a CDFI Bond Guarantee Program participant by reason of any Guarantee provided under the Act for the purpose of any applicable law.

§ 1808.626 Limitation on liability.

The liability of the Federal Government arising out of any fees or funds

obtained by a CDFI Bond Guarantee Program participant in accordance with this interim rule shall be limited to the amount of the fees or funds obtained by the CDFI Bond Guarantee Program participant. The Federal Government 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.

§ 1808.627 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of any Guarantee, Bond, Bond Loan or Secondary Loan provided under this interim rule must report such incidents to the Office of Inspector General of the U.S. Department of the Treasury.

PART 1815—ENVIRONMENTAL QUALITY

Sec.

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

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

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

§ 1815.100 Policy.

The Community Development Financial Institution Fund's policy is to ensure that environmental factors and

§ 1815.101

concerns are given appropriate consideration in decisions and actions by the Fund and to reduce any possible adverse effects of Fund decisions and actions upon the quality of the human environment.

§ 1815.101 Purpose.

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

§ 1815.102 Definitions.

(a) For the purpose of this part:

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

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

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

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

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

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

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

12 CFR Ch. XVIII (1-1-16 Edition)

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

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

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

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

§ 1815.103 Designation of responsible Fund official.

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

§ 1815.104 Specific responsibilities of the designated Fund official.

The designated Fund official shall:

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

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

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

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

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

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

(g) Monitor the consideration and documentation of the environmental

aspects of Fund planning and decision-making processes by appropriate officers and employees of the Fund;

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

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

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

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

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

§ 1815.105 Major decision points.

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

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

(2) Final approval and funding stage.

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

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

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

(i) The applicant supplying to the Fund all information necessary for the Fund to perform or have performed any

environmental review required by this part;

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

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

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

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

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

§ 1815.106 Supplemental environmental review.

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

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

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

§ 1815.107

designated Fund official when proposing any action requiring a supplemental environmental review and shall supply to the Fund all information necessary for the Fund to perform the supplemental environmental review. The Fund shall perform or have performed such a supplemental environmental review. The applicant shall not use any Fund financial assistance to perform any of the proposed actions requiring a supplemental environmental review that affect the physical environment until Fund approval for such action is received.

§ 1815.107 Determination of review requirement.

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

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

§ 1815.108 Actions that normally require an EIS.

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

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

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

12 CFR Ch. XVIII (1–1–16 Edition)

feet or more of new commercial space, or which would provide sites for 1,500,000 square feet or more of new commercial space.

§ 1815.109 Preparation of an EIS.

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

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

- (1) Substantial changes are proposed to an action contained in the draft or final EIS that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or
- (2) Actions are proposed which relate or are similar to other action(s) taken or proposed and that together have a cumulatively significant impact on the environment.

§ 1815.110 Categorical exclusion.

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

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

limited to, furnishings, equipment, supplies and services; space acquisition; property management; and security);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1815.111 Actions that require an environmental assessment.

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

§ 1815.112 Preparation of an environmental assessment.

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

(b) An environmental assessment is a concise public document used to determine whether to prepare an EIS. An

§ 1815.113

environmental assessment aids in complying with the NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary. The environmental assessment shall contain brief discussions of the following topics:

- (1) Purpose and need for the proposed action;
- (2) Description of the proposed action;
- (3) Alternatives considered, including the no action alternative;
- (4) Environmental effects of the proposed action and alternative actions; and
- (5) Listing of agencies, organizations or persons consulted.

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

- (1) Natural/ecological features (such as floodplain, wetlands, coastal zones, wildlife refuges, and endangered species);
- (2) Air quality;
- (3) Sound levels;
- (4) Water supply, wastewater treatment and water runoff;
- (5) Energy requirements and conservation;
- (6) Solid waste;
- (7) Transportation;
- (8) Community facilities and services;
- (9) Social and economic;
- (10) Historic and aesthetic; and
- (11) Other relevant factors.

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

§ 1815.113 Public involvement.

All information collected by the Fund pursuant to this part shall be

12 CFR Ch. XVIII (1-1-16 Edition)

available to the public consistent with the CEQ regulations. Interested persons may obtain information concerning any pending EIS or any other element of the environmental review process of the Fund by contacting the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., room 5116, Washington, DC 20220, or such other contact entity designated by the Fund.

§ 1815.114 Fund decisionmaking procedures.

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

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

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

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

§ 1815.115 OMB control number.

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

PARTS 1816-1899 [RESERVED]