

Federal Reserve

Thursday
October 19, 1995

Part III

**Department of the
Treasury**

**Community Development Financial
Institutions Fund**

**12 CFR Chapter XVIII et al.
Community Development Financial
Institutions Program, Bank Enterprise
Award Program, Environmental Quality;
Interim Final Rule**

DEPARTMENT OF THE TREASURY**Community Development Financial Institutions Fund****12 CFR Chapter XVIII and Parts 1805, 1806 and 1815**

RIN 1505-AA71

Community Development Financial Institutions Program, Bank Enterprise Award Program, Environmental Quality

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

ACTION: Interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing an interim rule implementing two new programs administered by the Community Development Financial Institutions Fund (CDFI Fund or Fund). The initiatives shall be known as the Community Development Financial Institutions Program (CDFI Program) and the Bank Enterprise Award Program (BEA Program). The programs were authorized by the Community Development Banking and Financial Institutions Act of 1994. The interim rule also provides environmental quality procedures related to these programs. The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry.

DATES: Interim rule effective October 19, 1995; comments must be received on or before January 15, 1996.

ADDRESSES: All comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Room 5116, Washington, DC 20220. Comments may be inspected at the above address between 9:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Kirsten Moy, Community Development Financial Institutions Fund, at (202) 622-8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:**I. General***Executive Order (E.O.) 12866*

It has been determined that this regulation is a significant regulatory action as defined in E.O. 12866. Because no substantive changes were made to this regulation subsequent to

submission to the Office of Management and Budget (OMB), the provisions of section 6(a)(3)(E) of the Order do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the Department of the Treasury finds that any economic or other consequence of this interim rule are a direct result of the implementation of statutory provisions.

Paperwork Reduction Act

The Department of the Treasury is issuing these regulations without notice and public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1505-0153 (expires 9/30/98). Comments concerning the collections of information, the accuracy of the estimated average annual burden, and suggestions for reducing such burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (OMB Paperwork control number 1505-0153), Washington, DC 20503, with copies to the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Room 5116, Washington, DC 20220. Any such comments should be submitted not later than January 15, 1996.

Provisions requiring the collection of information can be found in §§ 1805.701, 1805.903, 1806.206, 1806.301, 1806.304, 1806.305 and 1815.105 of these regulations. The information requested in such provisions is necessary to evaluate applications, monitor the performance of entities receiving assistance, and ensure compliance with statutory and program requirements. The anticipated respondents and recordkeepers are financial institutions that may apply for and receive assistance.

Estimated total annual reporting and/or recordkeeping burden:

CDFI Program:

Applicants—30,000 hours
Awardees—2,160 hours.

BEA Program:

Applicants—1,000 hours
Awardees—750 hours.
Total Hours—33,910.

Estimated average annual burden hours per respondent and/or recordkeeper:

CDFI Program:

Applicants—100 hours
Awardees—72 hours.

BEA Program:

Applicants—12 hours
Awardees—25 hours.

Estimated number of respondents and/or recordkeepers: 400.

Estimated annual frequency of responses: CDFI Program: 1-5; BEA Program: 1-2.

National Environmental Policy Act

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

Administrative Procedures Act

Pursuant to the provisions of 5 U.S.C. 553(a)(2), these regulations are exempt from the proposed rule-making requirements of 5 U.S.C. 553(b) and are being issued as interim regulations without opportunity for notice and public comment prior to their effective date. Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. The statute authorizing the programs was enacted over a year ago. As part of that Act, Congress set up special procedures to make the CDFI Fund operational as soon as possible. Furthermore, Congress appropriated funds for FY 1995 and required such funds to be obligated by September 30, 1996. Such actions clearly indicate Congress' intent that the program be implemented in an expeditious manner. If the Department does not issue these regulations for effect, it will not be feasible to implement the program prior to September 30, 1996 in a manner that achieves the results intended by Congress.

Catalog of Federal Financial Assistance Numbers: Community Development Financial Institutions Program—21.020; Bank Enterprise Award Program—21.021.

II. Background

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

Consistent with the placement and administration of the Fund within the Department's organizational structure, the Department of the Treasury's Inspector General will serve as the Inspector General for the Fund. Any individual who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided by the Fund is encouraged to report it to the Department of the Treasury's Office of Inspector General in writing or on the Inspector General's Hotline (toll free 1-800-359-3898). All telephone calls will be handled confidentially. Written complaints should be addressed to the U.S. Department of the Treasury, Office of Inspector General, Room 2412, 1500 Pennsylvania Avenue N.W., Washington, DC 20220.

All records and materials pertaining to the selection and award of assistance by the Fund shall be fully subject to the Freedom of Information Act. Interested parties should contact the U.S. Department of the Treasury, Office of the Assistant Secretary for Management, Disclosure Services at (202) 622-1500.

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

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

The CDFI Fund was established to facilitate the creation of new, and expansion of existing, financial institutions that are specialized in serving these markets. These institutions—while highly effective—are typically small in scale, too few in number, and often have difficulty raising the equity capital needed to meet the demands for their products and services. The investments of the CDFI Program are intended to provide much-needed capital that will enable existing

institutions to expand and facilitate the start-up of new institutions.

The CDFI Fund also recognizes the important role that traditional financial institutions have played, and should continue to play, in serving the credit needs of distressed communities and their residents. As a means of facilitating increased activity and innovation among traditional financial institutions, these regulations will implement the BEA Program. The BEA Program has its roots in the Federal Deposit Insurance Corporation Improvement Act of 1991. The program was significantly modified as part of the CDFI Act to enable it to function as a companion to the CDFI Program. Together, the CDFI Program and BEA Program will promote activity among the spectrum of financial institutions that serve distressed communities.

The following interim regulations permit the Fund to implement the CDFI Program and the BEA Program. Today's Federal Register contains a separate Notice of Funds Availability (NOFA) for each of these programs. It is the intention of the Fund to evaluate the first round of applications for the programs using these regulations and applicable Department of the Treasury regulations. Final regulations will be published after receipt and consideration of public comments. Such public comments are extremely important to the development of the final regulations. The remainder of this background section provides a summary of the major provisions in the regulations and highlights important issues for public comment.

III. Community Development Financial Institutions Program

Under the CDFI Program (12 CFR part 1805), the Fund will provide financial and technical assistance to selected applicants in order to enhance their ability to make loans and investments and provide services for the benefit of designated investment area(s), targeted population(s) or both. The Fund will select awardees through a competitive application process. After selection, each awardee will enter into an assistance agreement with the Fund that will require it to achieve financial, organizational development, and community impact performance goals.

Subpart A—General Provisions

Subpart A contains general provisions of the CDFI Program, including its relationship to other Fund programs (§ 1805.102) and the definitions applicable to this part (§ 1805.104).

Subpart B—Eligibility

Section 1805.200 establishes criteria for qualification as a CDFI. The criteria reflect the requirements stated in the authorizing statute. To be eligible to apply for assistance, an entity must either be, or propose to become, a CDFI. The regulations describe the information needed by the Fund to assess whether, among other things: (1) The applicant has a primary mission of community development; (2) the applicant's predominant business activity is the provision of loans or investments; and (3) the applicant serves an investment area(s) or targeted population(s). The Fund recognizes that there will be significant diversity among applicants with respect to asset size, organizational type, stage of organizational development, products and services offered, and the geographic location. The Fund seeks comments on how effectively the eligibility criteria in the regulations apply to this broad range of organizations.

Section 1805.201 allows an entity to apply to the Fund for certification as a CDFI regardless of whether it is applying for assistance. The Fund believes that such a certification process will recognize the importance of the activities that institutions are engaged in, enhance their credibility with investors, and facilitate participation by CDFIs in other government programs.

Subpart C—Target Markets

As stated in § 1805.300, an applicant must designate one or more investment areas or targeted populations as the target market(s) it intends to serve. Section 1805.301 gives each applicant significant flexibility in designating an investment area provided that certain conditions are met. Investment areas must meet objective criteria of distress. Consistent with its statutory mandate, the Fund has developed objective criteria that are appropriate for identifying distress in metropolitan, non-metropolitan and Native American communities. These criteria were developed in consultation with the Departments of Housing and Urban Development, Agriculture, Interior and Commerce and the Small Business Administration. Investment areas can comprise a variety of different geographic units in order to reflect the neighborhoods, areas, or markets that applicants serve or propose to serve. The Fund seeks input from applicants and other interested parties on whether the Fund's criteria for designation of investment areas are appropriate for the markets and communities that applicants serve.

Section 1805.302 incorporates the statutory requirements for defining a targeted population.

Subpart D—Use of Funds/Eligible Activities

Section 1805.401 lists the eligible activities for which financial assistance must be used and permits the Fund to approve other activities. Section 1805.402 requires that an applicant's use of the Fund's assistance and any corresponding matching funds for purposes approved by the Fund as reflected in an assistance agreement. The regulations place restrictions on such applicant's distribution of monies to affiliates or its community partners. Section 1805.403 provides that technical assistance resources may be allocated at the discretion of the Fund and must be used to build the capacity of CDFIs. Such assistance may be provided regardless of whether an entity receives financial assistance.

Subpart E—Investment Instruments

Section 1805.500 states that the Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an awardee. Both Fund financial assistance and matching funds must be used to achieve specific performance goals. The Fund retains discretion to provide its assistance in a manner and amount different from an applicant's request.

Section 1805.501 describes the types of investment instruments through which the Fund may provide financial assistance. Section 1805.502 restates the CDFI Act's aggregate assistance limit of \$5 million for each applicant in any three-year period (which may be increased by up to \$3.75 million under special circumstances). Pursuant to § 1805.503, the Fund has the right to sell its equity investments or loans, but retains the authority to monitor and enforce each awardee's performance goals.

Subpart F—Matching Funds Requirements

Pursuant to § 1805.600, each applicant must obtain matching funds from sources other than the Federal government that are at least equal to the amount of financial assistance provided by the Fund. Community Development Block Grant funds may not be used for the match. As required by the Act and § 1805.601, the matching funds must be comparable in form and value to the Fund's financial assistance. This provision is intended to encourage match providers to offer their resources under the most favorable terms and

conditions possible and enable a CDFI to obtain the Fund's assistance in a like manner. Under certain limited circumstances and at the Fund's discretion, an applicant may receive a severe constraints waiver of the matching funds requirements pursuant to § 1805.602. Section 1805.603 permits applicants to use matching funds obtained for up to one year prior to publication of a NOFA for a particular funding round. Each NOFA may establish other conditions or restrictions on the time period for raising matching funds. The Fund seeks comments on how to structure its assistance so that CDFIs may seek matching funds on the most favorable terms possible.

Subpart G—Applications for Assistance

Section 1805.701 specifies the information that must be provided as part of an application. This information describes how an applicant can demonstrate whether it meets the eligibility requirements of subpart B. The section also describes information that an applicant must provide to be evaluated and selected under subpart H. The most significant component of the application is a five-year comprehensive business plan. The plan will provide the basis for evaluating both the applicant's current capacity and its potential for the future. The plan must include, among other things, elements related to financial performance, management policies and capacity, market analysis, coordination efforts, community impact, funding resources, and timing. The application must contain a detailed description of the matching funds to be raised by the applicant for use in conjunction with the Fund's assistance. In developing the application requirements, the Fund has sought to focus on the types of information that private or public investors would expect from such institutions. The Fund seeks comments from applicants and other interested parties on the appropriateness of the comprehensive business plan's contents.

Subpart H—Rating and Selection of Applicants

Section 1805.800 outlines the evaluation and selection process. Section 1805.801 indicates the Fund's intent to seek to fund a geographically diverse group of applicants as required by the CDFI Act. Pursuant to § 1805.802, applicants will be evaluated and selected on a competitive basis using a three-tiered process. Tier I is intended to screen out applicants that do not meet the eligibility requirements or who have submitted inadequate application materials. Tier II is intended to screen

out applicants that do not possess the organizational and financial capacity to be a successful CDFI. Tiers I and II will eliminate applications not appropriate for funding and allow the Fund to focus on those applications with the greatest ability to maximize community impact, operate in a sound manner, and achieve the public policy goals of the program. As provided in the CDFI Act, the Fund has sole discretion in selecting applicants for assistance.

Tier III of the process will be used to evaluate the qualitative aspects of the remaining applications. The Fund will examine factors related to organizational capacity, extent of external resources, and community impact. The Fund will seek to implement the evaluation and selection process in a manner that takes into consideration the unique characteristics of applicants that vary by organizational type, total asset size, and stage of organizational development. The process will consider the contributions of community partners in an applicant's efforts. The process will permit the Fund to give additional consideration to applicants that: (1) Have secured all their matching funds; (2) concentrate their activities within target markets; and (3) dedicate the greatest portion of their overall resources to lending, investments and development service activities.

The Fund has dedicated significant efforts toward designing its evaluation and selection process and seeks comments on its effectiveness in directing resources to applicants that can best fulfill the objectives of the program. Comments are also requested to assist the Fund in identifying the best measures of an applicant's organizational and financial capacity—reflecting its desire to direct monies to applicants that can use its resources most effectively. Finally, the Fund seeks comments on other priorities that should be reflected in the evaluation and selection process.

Subpart I—Terms and Conditions of Assistance

While Federal and State agencies will retain responsibility for assuring the safety and soundness of insured CDFIs, pursuant to § 1805.900 the Fund will (to the extent practicable) ensure that unregulated awardees are financially and managerially sound and maintain appropriate internal controls. Prior to receiving assistance, each awardee will execute an agreement with the Fund that describes its performance goals and other terms and conditions of assistance. Section 1805.901 describes the nature and use of the Fund's assistance agreements. The agreement

will contain sanctions for noncompliance. As required by the Act, any proposed sanctions to be imposed on an insured CDFI must be discussed with the appropriate Federal banking agency under specific procedures. Pursuant to § 1805.902, disbursement of assistance from the Fund will be in a lump sum or over a period of time, as determined by the Fund. However, the Fund may provide no financial assistance until the awardee has secured a firm commitment for its corresponding matching funds. This provision is intended to ensure that no Federal funds are released until other resources are leveraged.

Section 1805.903 describes the recordkeeping and reporting requirements applicable to awardees. These requirements are consistent with the Fund's fiduciary and monitoring responsibilities. Awardees are required to submit quarterly data on financial performance and annual reports and audits on its financial and programmatic performance. The Fund will seek to utilize information available through the appropriate Federal banking agencies on insured CDFIs as required by the CDFI Act.

In developing its regulations, the Fund has sought to minimize its recordkeeping and reporting requirements. The Fund requests input on how to further reduce such burden while still meeting its monitoring and enforcement needs. The Fund further seeks suggestions how to best measure and monitor the performance of awardees without imposing onerous reporting requirements.

All awardees shall be subject to legal requirements pertaining to the Fund's assistance, including conflict of interest standards. Section 1805.905 requires each awardee to comply with all other governmental requirements. Section 1805.906 requires awardees to maintain standards of conduct acceptable to the Fund. Section 1805.907 describes lobbying restrictions applicable to awardees.

IV. Bank Enterprise Award Program

Section 114 of the CDFI Act is based on the Bank Enterprise Act and gives the Fund authority to implement, with some modifications, its provisions. The Bank Enterprise Act was enacted in 1991, but had not previously received appropriated funds for implementation.

The purpose of the BEA Program (12 CFR part 1806) is to encourage insured depository institutions to increase loans, services and technical assistance within distressed communities and to make equity investments in CDFIs. The BEA Program rewards participating insured

depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. Applicants are selected to participate in the program through a competitive process which evaluates applications based on the value of proposed increases in their specified activities. Program participants receive monies only after successful completion of the specified activities.

Subpart A—General Provisions

Section 1806.102 describes the program's relationship to the CDFI Program (part 1805). To prevent applicants from receiving more than one Federal award for a single activity, no CDFI may receive an award under the BEA Program if it: (1) Has an application pending under the CDFI Program; (2) has received assistance from that program within the preceding 12 months; or (3) has ever received assistance under that program for the same activities proposed in a BEA Program application. Assistance provided to a CDFI by a BEA Program participant may be used by the CDFI as matching funds for the CDFI Program. BEA applicants that propose to make an equity investment in a CDFI must request that the entity be certified as a CDFI under § 1805.201 of the CDFI Program regulations.

Subpart B—Awards

Distressed Community

Section 1806.200 describes the community eligibility and designation process. An insured depository institution applying for an award is required to designate a distressed community or communities if it proposes to carry out certain specified activities (Eligible Development Activities) or make equity investments that support the efforts of a CDFI in a distressed community.

The statute mandates that each designated distressed community meet certain geographic requirements and distress criteria. Under the geographic requirements, the community must be located within certain boundaries, its boundaries must be contiguous and its population must meet certain requirements or it must be located entirely within an Indian Reservation (as defined in the regulations). The distress criteria require that at least 30 percent of the residents have incomes which are less than the national poverty level and the unemployment rate for the area must be at least 1.5 times the national average (as determined by the Bureau of the Statistics' most recent figures). Such criteria will target BEA

Program resources to some of the most distressed communities in the nation. The Fund seeks comments from applicants and other interested parties on how, working within the framework of the geographic requirements and distress criteria, it can maximize participation in the program.

Qualified Activities

In § 1806.201 the activities that program participants may engage in are categorized as equity investments in CDFIs or Eligible Development Activities. Eligible Development Activities include certain consumer, commercial real estate, single family, multi-family, business and agricultural loans. Each of these loans is defined and must serve the distressed community. Additional Eligible Development Activities specified are deposit taking activities and providing certain services and technical assistance to specified persons. Certain grants, loans and technical assistance to CDFIs also qualify as Eligible Development Activities. Each Eligible Development Activity is assigned a priority factor based on the Fund's assessment of its degree of difficulty, the extent of innovation involved, and the extent of benefits provided to a distressed community by the activity. The Fund specifically seeks comments about the appropriateness of the priority factors assigned to each activity, as well as other methodologies that could be explored for prioritizing activities.

In developing the categories of Eligible Development Activities, the Fund sought to minimize recordkeeping and reporting burdens. The Fund specifically seeks comments on the extent to which the activity categories correspond to information already collected by insured depository institutions and how the categories (and the manner in which activities are valued) might be modified to reduce reporting burden.

Measuring Activities

Section 1806.202 describes the methodology used to measure activities for the purpose of ranking applications and determining award amounts. All qualified activities will be measured by the increases in value of the activities between a retroactive baseline period (for which the applicant will provide historical data) and a prospective assessment period (for which the applicant must project future activity levels). Dates for the baseline and assessment periods will be published in the NOFA for each funding round.

Estimated Award Amounts

In § 1806.203 procedures are established for calculating estimated award amounts. In general, the estimated award amount for equity investments in CDFIs will be equal to 15 percent of an applicant's anticipated increase in such equity investments. For Eligible Development Activities, a seven step procedure is established under which a total score is calculated. Generally, if the applicant is a CDFI, the total score is multiplied by 15 percent to determine the estimated award. If the applicant is not a CDFI, the total score is multiplied by 5 percent. The Fund specifically seeks comment on whether the award levels are appropriate for prompting applicants to increase their activities within distressed communities. The Fund also requests comments on whether there are other approaches or methodologies that could be explored for facilitating increased activity levels among insured depository institutions.

Selection Process

A selection process is established in § 1806.204 which reflects the funding priorities mandated in statute. First, applications that propose equity investments in CDFIs that support the efforts of those institutions in distressed communities will be selected. Second, applicants that propose equity investments in other CDFIs will be selected. Finally, applicants that propose to undertake Eligible Development Activities will be selected. Applications in the first two categories will be ranked based on the extent to which an applicant proposes to reduce its award below 15 percent. Ties between applicants will be broken using the ratio of proposed equity investments to the asset size of the institution. Applications in the last category of funding priorities will be ranked according to the ratio of an applicant's total score relative to its asset size. Any ties between such applicants will be broken using the poverty rates of the distressed communities.

Actual Award Amounts

Section 1806.205 establishes the funding process. In developing these regulations, the Fund considered three alternative schemes for selecting and funding applicants. A "prospective" system was considered which makes selections based on projected achievements and provides incentives at the beginning of the implementation period (with a requirement that the award be returned in the event of nonperformance). A "ex-post facto"

system was also considered which evaluates and makes awards based on activities that have already been implemented. Finally, a "hybrid" system was considered which selects program participants based on projected performance, but provides awards only after the activities have been implemented. The latter approach was selected because it: (1) Provides greater certainty to program participants that they will be rewarded for completing their projected activities; and (2) achieves the public policy objective of utilizing the Fund's limited resources to catalyze new activities. The Fund specifically seeks comments on whether this approach will best maximize community impact and the participation of insured depository institutions. The Fund also seeks suggestions on other approaches that might maximize the impact of its limited resources.

Awards are provided based on activities that are actually carried out. If an awardee carries out 90 percent or more of its projected activities, it will receive the full estimated award amount. If an awardee only partially achieves its projected activities, the Fund may provide a partial award. Partial achievement is set at less than 90 percent but at least 75 percent. The Fund may adjust the percentages used to define partial achievement in certain circumstances. These provisions will allow the Fund to pro-rate award amounts based on actual performance in order to: (1) Prevent applicants from over-estimating projected activities to enhance their competitiveness in the selection process; and (2) recognize that achieving a projected performance goal is not always within the complete control of the program participant. The Fund specifically seeks public comments on whether such a mechanism will accomplish these goals or whether there are alternative mechanisms that should be explored.

Application Process

Section 1806.206 describes the application process for Bank Enterprise Awards. Each funding round will be preceded by a NOFA published in the Federal Register. The NOFA will contain specific information on requirements or restrictions applicable to such round. As indicated above, the Fund has sought to minimize its application and reporting requirements and seeks comment on how these requirements might be improved.

Subpart C—Terms and Conditions of Assistance

Section 1806.300 requires that each Awardee execute an award agreement

with the Fund. The agreement will establish requirements for receiving funds and appropriate sanctions for failure to comply with program requirements. Section 1806.301 specifies that, at the end of the assessment period, each Awardee will submit evidence of its completed activities and an estimate of the benefits they have generated within the distressed community. Upon receipt of these final reports, the Fund will make the appropriate disbursement of funds to the awardee.

V. Environmental Quality

The National Environmental Policy Act (NEPA) directs Federal agencies to interpret and administer the policies, regulations and public laws of the United States in accordance with the environmental policies established in section 101 of NEPA. The Council on Environmental Quality (CEQ) issued regulations to provide uniform standards applicable throughout the Federal government for conducting environmental reviews. The CEQ regulations require that each agency develop its own procedures to supplement the CEQ regulations. The Department of the Treasury's NEPA implementing procedures are contained in Treasury Directive 75-02, Department of the Treasury Environmental Quality Program. The Directive provides that each bureau issue its own supplementary procedures as necessary for the implementation of NEPA.

The regulations in 12 CFR 1815 are the Fund's implementing procedures for compliance with NEPA and the CEQ regulations. These regulations are designed to: (1) Integrate the NEPA process with other planning and decisionmaking processes of the Fund; (2) ensure that the Fund's decisions are made in compliance with NEPA and the CEQ regulations, and (3) involve the public in the NEPA process in an appropriate and responsible manner. These procedures address: (1) the Fund's decisionmaking process related to substantive consideration of environmental factors; (2) the procedural requirements for environmental documentation at critical stages of the decisionmaking process; and (3) establishment of criteria to assist in determining the need for environmental assessments and environmental impact statements. Part 1815 of these regulations have been reviewed by the CEQ for conformance with NEPA and the CEQ regulations.

Section 1815.103 designates the Director of the Fund as the official responsible for implementation of the

Fund's environmental quality policies and procedures. Section 1815.104 sets forth the specific duties of such official.

As indicated in § 1815.105, there are two distinct stages in the decisionmaking process for award of the Fund's assistance: (1) A preliminary approval point at which applications are selected; and (2) a subsequent stage where funding actually occurs. Part 1815 of the regulations have been drafted to take into account this staged process. During its initial application review, the Fund will determine whether an applicant proposes actions which are categorically excluded or that normally require an environmental impact statement (EIS) or an environmental assessment. If any proposed action is not categorically excluded, funding approval will be conditioned upon submission of information by the applicant that is necessary to perform the appropriate environmental review. No Federal funds may be used for such an action until the environmental review is completed and approved by the Fund. If the information provided is not sufficient to perform a meaningful environmental review during the application screening process, § 1815.106 requires a supplemental environmental review prior to taking any action: (1) That is not categorically excluded; (2) that directly uses Federal funds; and (3) for which an environmental assessment or EIS has not been approved by the Fund. The Fund will require that it be informed of any action that would require further environmental review prior to the use of any Federal funds as part of the required application materials and assistance agreements.

Section 1815.108 establishes certain actions that will require an EIS to be performed. Section 1815.109 prescribes procedures to be followed when such an EIS is necessary. Section 1815.110 provides a list of actions that constitute a categorical exclusion (activities that do not individually or collectively have a significant effect on the human environment). Absent extraordinary circumstances, these actions do not require preparation of either an environmental assessment or an EIS. Section 1815.112 outlines procedures for the preparation of an environmental assessment if an action does not normally require an EIS and is not categorically excluded. As indicated in § 1815.113, information collected by the Fund will be available to the public consistent with the CEQ regulations.

The Fund anticipates that most actions to be proposed and carried out by applicants will be categorically excluded. However, if it becomes

evident during either the application review or implementation stages that an action does not meet these exclusion standards, the Fund (in cooperation with the program recipient) will diligently perform its environmental review responsibilities under NEPA, the CEQ regulations, and these supplemental procedures.

List of Subjects

12 CFR Part 1805

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

12 CFR Part 1806

Banks, banking, Community development, Economic development, Grant programs—community development, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 1815

Environmental impact statements, Environmental protection, Reporting and recordkeeping requirements.

Dated: October 10, 1995.

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

For the reasons set forth in the preamble, a new chapter XVIII consisting of parts 1805, 1806, and 1815 is established in title 12 of the Code of Federal Regulations to read as follows:

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

Part

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1806 Bank enterprise award program

1815 Environmental quality

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

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Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104-19, 109 Stat. 237 (12 U.S.C. 4703 note).

Subpart A—General Provisions

§ 1805.100 Purpose.

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

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical

assistance through a competitive application process. Each financial assistance Awardee will enter into an Assistance Agreement which will require it to achieve financial, organizational development, and community impact goals.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.*

(1) No Insured CDFI may receive assistance from the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application for assistance pending under the Community Development Financial Institutions Program;

(ii) Received assistance under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Received assistance under the Community Development Financial Institutions Program for the same activities as proposed under an application for the Bank Enterprise Award Program.

(2) An Equity Investment (as defined in part 1806 of this chapter) in, or a loan to, a CDFI made by a Bank Enterprise Award Program Awardee may be used to meet the matching fund requirements described in subpart F of this part. Receipt of such Equity Investment or loan does not disqualify a CDFI from receiving assistance under this part.

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

§ 1805.103 Awardee not instrumentality.

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

§ 1805.104 Definitions.

For the purpose of this part:

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

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

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

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit

Insurance Act (12 U.S.C. 1811 et seq.), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

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

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

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

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

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

(j) *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;

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

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

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

(n) *Comprehensive Business Plan* means a document covering not less than the next five fiscal years which meets the requirements described under § 1805.701(d);

(o) *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. 1811 et seq.);

(p) *Development Investment* means an equity investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate;

(q) *Development Services* means activities that promote community development and are integral to lending and Development Investment activities. Such services shall prepare or assist potential borrowers or investees to utilize the lending or investment products of the Awardee, its Affiliates, or its Community Partners. Such services include:

(1) Financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or

(2) Technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

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

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

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

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

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

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

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

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

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

(z) *Investment Area* means a geographic area meeting the requirements of § 1805.301;

(aa) *Low-Income* means an income (as reported by the Bureau of the Census in the 1990 decennial census), 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;

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

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

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

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

(ff) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.302.

§ 1805.105 Waiver authority.

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

facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notice of granted waivers in the Federal Register.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505-0153 (expires September 30, 1998).

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in paragraphs (b) through (h) of this section will be considered a CDFI and will be eligible to apply for assistance under this part. Criteria to establish compliance with such requirements are set forth in § 1805.701(b).

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's Comprehensive Business Plan provides a realistic course of action to ensure that it will meet the requirements described in this section within three years of entering into an Assistance Agreement with the Fund.

(3) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and as set forth in § 1805.701(b).

(b) *Primary mission.* A CDFI shall have a primary mission of promoting community development.

(c) *Target market.* A CDFI shall serve an Investment Area(s) or Targeted Population(s).

(d) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision of loans or Development Investments.

(e) *Development Services.* A CDFI, directly or through an Affiliate, shall provide Development Services in conjunction with loans or Development Investments.

(f) *Accountability.* A CDFI must maintain accountability to its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(g) *Non-government entity.* A CDFI shall not be an agency or instrumentality of the government of the United States, or any State or political subdivision thereof. An entity that is

created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided that it is not controlled by such entities and maintains independent decision-making power over its activities.

(h) *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 paragraphs (a) through (g) of 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 paragraphs (a) through (g) of 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 paragraphs (a) through (g) of this section.

(4) For the purposes of paragraphs (h) (1), (2) and (3) of this section, an Applicant will not be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls less than 25 percent of any class of its voting shares, and which does not, in any manner, otherwise control the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements (as described under § 1805.200) regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information described under § 1805.701(b). Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such a certification shall not constitute an opinion by the Fund as to the financial viability of the entity that obtains such certification.

Subpart C—Target Markets

§ 1805.300 Target markets—general.

An Applicant shall designate one or more Investment Area(s) or Targeted Population(s) that it proposes to serve. An Applicant may also choose to serve both an Investment Area(s) and a Targeted Population(s). An Investment

Area shall meet specific geographic and other criteria discussed in § 1805.301. A Targeted Population shall consist of Low-Income persons or those who otherwise lack adequate access to loans or equity investments.

§ 1805.301 Investment area.

(a) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(1)(i) Meets at least one of the objective criteria of economic distress as set forth in paragraph (d) of this section and has significant unmet needs for loans or equity investments as described in paragraph (e) of this section; or

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

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

(b) *Geographic units.* An Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). An Applicant can designate one or more Investment Areas as part of a single application.

(c) *Designation.* An Applicant can designate an Investment Area by selecting:

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

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (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 1990 (or subsequent) decennial Census and published by the U.S. Bureau of the Census):

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

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

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

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

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

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

(5) In areas located outside of a Metropolitan Area, the county population loss between 1980 and 1990 is at least 10 percent.

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

§ 1805.302 Targeted population.

(a) A Targeted Population shall mean individuals, or an identifiable group of individuals, who: Are Low-Income persons; or lack adequate access to loans or equity investments. An Applicant can serve the members of a Targeted Population directly or through borrowers or investees that directly serve or provide significant benefits to such members.

(b) The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(c) An Applicant shall provide its products and services in a manner that is consistent with the Equal Credit Opportunity Act (15 U.S.C. 1691), to the extent that the Applicant is subject to the requirements of such Act.

Subpart D—Use of Funds/Eligible Activities

§ 1805.400 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart E

of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to make loans and Development Investments and provide Financial Services.

§ 1805.401 Eligible activities.

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

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

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

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

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

(c) Community Facilities;

(d) The provision of Financial Services;

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

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

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

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

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

§ 1805.402 Restrictions on use of assistance.

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

(b) An Awardee shall consult with, and obtain the approval of, the Fund for any significant changes in its activities from those approved by the Fund and described in the Assistance Agreement.

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

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

§ 1805.403 Technical assistance.

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

(b) The Fund may provide technical assistance regardless of whether or not the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.502.

(c) An Applicant seeking technical assistance must meet the eligibility requirements of § 1805.200 and submit an application as described in § 1805.701.

(d) The Fund, in its sole discretion, may select Applicants to receive technical assistance.

Subpart E—Investment Instruments**§ 1805.500 Investment instruments—general.**

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will require each Awardee to utilize such financial assistance and its corresponding matching funds to achieve the performance goals established in its Assistance Agreement. The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.501, and under such terms and conditions as described in this subpart. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.501 Forms of investment instruments.

(a) *Equity.* The Fund may purchase non-voting stock in a for-profit

Awardee. The stock shall be transferable and may convert to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

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

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

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

§ 1805.502 Assistance limits.

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

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

(1) Shall only be used to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

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

(c) An Awardee may only receive the financial assistance described in paragraph (b) of this section if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) has been selected by the Fund within the previous one-year period, and no other application which meets the minimum requirements of § 1805.802(a) and (b) was submitted within the current funding round.

§ 1805.503 Authority to sell.

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

Subpart F—Matching Funds Requirements**§ 1805.600 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 § 1805.602, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement.

§ 1805.601 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.602). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

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

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

§ 1805.602 Severe constraints waiver.

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

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than \$100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than \$25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation

under this part in any fiscal year may be matched as described in paragraph (a) of this section.

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

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

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

§ 1805.603 Time frame for raising match.

Applicants may use monies that have been obtained or legally committed for up to one year prior to the publication of a Notice of Funds Availability (NOFA) for an applicable funding round to meet the matching requirements. An Applicant shall raise the balance of its matching requirements within the period set forth in the applicable NOFA.

Subpart G—Applications for Assistance

§ 1805.700 Notice of Funds Availability.

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

§ 1805.701 Application contents.

Each application must contain the information specified in the application packet including the items specified in this section.

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

- (1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and
- (2) Any technical assistance needs for which it is requesting assistance.

(b) *Eligibility verification.* An Applicant shall provide information

necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in § 1805.200 by providing the information requested in this paragraph. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph.

(1) *Primary mission.* (i) A CDFI shall have a primary mission of promoting community development. The Fund will consider an Applicant to have such a mission if the activities of the Applicant and its Affiliates are principally directed:

- (A) Within the geographic boundaries of an Investment Area(s);
- (B) To members of a Targeted Population(s);
- (C) To projects that provide significant benefits to residents of an Investment Area(s) or members of a Targeted Population(s); or
- (D) To any combination of the above.

(ii) Using indicators selected by the Applicant that are appropriate given the nature of the products and services it (and its Affiliates) offers, an Applicant shall be deemed to satisfy the requirements of paragraph (b)(1)(i) of this section if it demonstrates that the activities of the Applicant and each Affiliate, when viewed collectively (as a whole), principally benefit such area(s) or population(s).

(iii) An Applicant shall provide the information requested in paragraph (b)(1)(ii) of this section in accordance with paragraph (c) of this section.

(2) *Target markets.* Using the information in paragraph (b)(1) of this section that is submitted for the Applicant (excluding information on any Affiliates), an Applicant shall demonstrate that its total activities predominantly serve Investment Area(s), Targeted Population(s) or both.

(3) *Designation.* An Applicant shall provide a description of the Investment Area(s) or Targeted Population(s) to be served. If an Applicant is serving:

- (i) An Investment Area(s), it shall submit:
 - (A) A completed Investment Area Designation worksheet contained in the application packet;
 - (B) A map of the designated area(s); and
 - (C) Studies or other analyses as described in § 1805.301(e);
- (ii) A Targeted Population(s), it shall submit:

(A) A completed Targeted Population Designation worksheet contained in the application packet; or

(B) Studies or other analyses that provide adequate evidence of lack of adequate access to loans or equity investments.

(4) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision of loans or Development Investments. An Applicant can demonstrate that it is such an entity if it is a:

(A) Depository Institution Holding Company;

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

(C) Organization which is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, annual reports, organizing documents, and any other information submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's institutional type, total asset size, and stage of organizational development.

(ii) An Applicant described under:

(A) Paragraph (b)(4)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(4)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(4)(i)(C) of this section shall submit a copy of its balance sheets and income and expense statements (and any notes or other supplemental information to its financial statements) as described in paragraph (d)(2)(i) of this section which clearly document its assets, liabilities, and net worth that are dedicated to lending and Development Investments and an explanation of how such assets, liabilities and net worth support these activities. An Applicant shall provide the information specified in this paragraph (b)(4)(ii)(C) for such periods as specified in paragraph (c) of this section.

(5) *Development Services.* An Applicant shall submit a summary description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(6) *Accountability.* An Applicant shall describe how it has and will maintain accountability to the Investment Area(s) or Targeted Population(s) it serves.

(7) *Non-government.* An Applicant shall submit articles of incorporation (or comparable organizing documents), charter, by-laws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(8) *Ownership.* An Applicant shall submit information indicating the portion of shares of all classes of voting

stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

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

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

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

(10) *Previous history.* An Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall describe its activities, operations and community benefits created for such periods as described in paragraph (c) of this section.

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

(1) Three years or more shall submit information on its activities (as described in paragraphs (b) (1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in paragraphs (b) (1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for each full fiscal year since its inception; or

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

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph. The Comprehensive Business Plan shall provide that an Applicant is a CDFI and will maintain such status throughout the five-year period, or will become a CDFI within three years of entering into an Assistance Agreement and maintain such status for the balance of the five-year period. The Plan should include projections that are appropriate given an Applicant's current and anticipated organizational type, total asset size, and stage of organizational development.

(1) *Executive summary.* An Applicant shall provide an executive summary of the Comprehensive Business Plan which includes a description of the

institution (including relationships to any Affiliates), markets served or to be served, community needs, and other pertinent information.

(2) *Financial performance—(i) Historic performance.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. Such statements should include balance sheets, income and expense statements, and a capitalization statement (which includes information on changes in capital structure and funding from outside sources) for the Applicant. The Applicant shall provide information necessary to assess trends in financial and operating performance (e.g., portfolio delinquencies, defaults and charge-offs, origination volume and volume of loans closed, annual or cumulative operating ratios).

(ii) *Future projections.* An Applicant shall submit projections for each of the next five years which includes balance sheet projections, income and expense projections, operating budgets, capitalization projections, estimates of the volume of new activity to be achieved with assistance provided by the Fund and matching funds, and describe any assumptions that underlie its projections.

(iii) *Financial statements.* If available, an Applicant shall submit audited financial statements. If audited statements are not available, an Applicant shall submit financial statements that have been reviewed by a certified public accountant and developed using accrual based accounting methods. All financial statements shall be reported on the basis of the Applicant's fiscal year. If an Applicant is seeking to use retained earnings to meet its match requirements pursuant to § 1805.600, it must submit audited financial statements for the applicable period.

(iv) *Financial management policies.* An Applicant shall submit information on its financial management policies that describe its methodologies for underwriting and approving loans and investments and managing and monitoring its portfolio, internal operations, and capitalization needs.

(3) *Management capacity.* An Applicant shall provide information on the background and capacity of its management team, including the relevant background and expertise of management (such as resumes or statements of personal history), key personnel and governing board members, if appropriate. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the

organization to successfully carry out its Comprehensive Business Plan.

(4) *Market analysis.* An Applicant shall provide an analysis of its target markets. An Applicant must:

(i) Describe its proposed target market(s), including a description of the characteristics of the Investment Area(s) (e.g., location, boundaries, economic characteristics, relationships to Metropolitan, non-Metropolitan, or regional markets) or Targeted Population(s) (e.g., number of persons, income, and other socio-economic characteristics), its methodology for selecting such target market(s), the size of the market(s), and any relevant market trends;

(ii) Describe the products and services (and corresponding pricing) it proposes to provide and analyze the competitiveness of such products and services in the target market(s); and

(iii) Identify and analyze any characteristics of the target market(s) that will create opportunities or present impediments for its products, services and overall market strategy (e.g., economic conditions, perceived or documented credit needs or Financial Service needs, market activity, neighborhood perceptions, government services or delivery systems, community institutions, or the strength of the employment base).

(5) *Strategy.* An Applicant shall describe its strategy for delivering its products and services to its target market(s). An Applicant may also describe any product or service development activities that are necessary before undertaking its strategy including the nature, scope, cost, timing, and risks of such activities. An Applicant shall also describe anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds.

(6) *Coordination strategy.* An Applicant shall describe:

(i) Its plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs and private sector resources;

(ii) How its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s); and

(iii) How it will coordinate with community organizations, financial institutions, and Community Partners which will provide loans, equity investments, secondary markets, or other services to an Investment Area(s) or a Targeted Population(s).

(7) *Projected community impact.* An Applicant shall provide an estimate of the benefits expected to be created within its Investment Area(s) or Targeted Population(s) over the next five years, as indicated by the extent to which:

(i) The Applicant will concentrate its activities within an Investment Area(s) or among Targeted Population(s);

(ii) The Applicant's activities will expand economic opportunity (e.g., number of jobs created, jobs retained, businesses financed, business ownership opportunities facilitated, residents of Investment Area(s) or members of Targeted Population(s) employed, number or dollar amount of business loans and investment originations);

(iii) The Applicant's activities will facilitate revitalization (e.g., number of square feet of commercial space financed, dollar amount of commercial real estate loan originations, indicators of demand for such commercial space (e.g., market vacancy rates, pre-leased tenants, number of long term leases), number and square feet of Community Facility space financed, number of long term leases, and dollar amount of Community Facility loan originations);

(iv) The Applicant's activities will promote affordable housing (e.g., number of affordable rental units, dollar amount of affordable rental housing loans originated, information on the demand for such housing (e.g., market vacancy rates, number of people on public and assisted housing waiting lists), information on the type of size of units and the people who will reside in such units (e.g., families, special needs populations), number of homes purchased and dollar amount of home ownership loan originations);

(v) The Applicant will provide Development Services (as measured by the number of individuals that will receive Development Services);

(vi) The Applicant will provide Financial Services (as measured by the number of new customers of Financial Services (e.g., individuals opening checking and savings accounts)); and

(vii) Such other indicators as deemed appropriate by the Applicant or the Fund.

(8) *Community need.* An Applicant may provide information on the extent of economic distress within its Investment Area(s) or needs of its Targeted Population(s) to supplement the data required pursuant to subpart C of this part and paragraph (b)(3) of this section. Such information may be from sources other than the 1990 decennial census.

(9) *Funding sources.* An Applicant shall provide information:

(i) On its current and projected sources of capital and other financial support;

(ii) To demonstrate that it has a plan for achieving or maintaining financial viability within the five-year period; and

(iii) To demonstrate that it will, to the maximum extent appropriate, increase self-sufficiency. Such information shall demonstrate that the Applicant will not be dependent upon future awards from the Fund for continued viability.

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

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

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

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.802(c)(4);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

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

(e) *Matching funds.* (1) An Applicant shall submit a detailed description of its plans for raising matching funds and likely or committed sources of funds to match the amount of financial assistance requested from the Fund. An Applicant shall indicate the extent to which such matching funds will be derived from private, non-government sources.

(2) An Applicant shall submit a description of any matching funds

previously obtained or legally committed. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, percentage that remains available to serve as match, and terms and restrictions on use for each matching source. The Application shall include copies of any agreements, memoranda of understanding, letters of intent, or similar documents pertaining to matching funds. The Applicant shall provide documentation to indicate that the matching fund source(s) has approved the use of the funds for matching purposes and the name, address and telephone number of a contact person for each entity providing matching funds.

(3) If the Applicant intends to use retained earnings to meet the matching requirements, it shall provide the information described in paragraph (d)(2)(iii) of this section and a copy of its tax returns for the same period. The Applicant shall submit a certification from its governing body:

(i) As to the amount and form of retained earnings available as matching funds; and

(ii) That such earnings will be used for the purposes described in its application.

(4) If the Applicant is requesting a "severe constraint waiver" of any matching requirements, it shall submit the information requested in § 1805.602.

(f) *Support.* An Applicant shall provide information to demonstrate the extent of support (if any) within the Investment Area(s) or Targeted Population(s) for its activities.

(g) *Community Ownership and Governance.* An Applicant shall provide information to demonstrate whether it is Community-Owned or Community-Governed.

(h) *Conflict of interest.* An Applicant shall submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.906.

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

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

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

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

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.907; and

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

Subpart H—Rating and Selection of Applications

§ 1805.800 Rating and selection—general.

Applicants will be rated and selected, at the sole discretion of the Fund, to receive assistance based on a multi-tiered review process that is intended to:

(a) Screen out Applicants that do not meet the basic program requirements or possess adequate capacity to be a successful CDFI;

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

(c) Evaluate and select Applicants.

§ 1805.801 Geographic diversity.

In selecting Awardees, the Fund shall seek to fund a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

§ 1805.802 Tiered review process.

(a) *Tier I Review.* Tier I of the review process is intended to ensure that an Applicant meets the eligibility requirements described under § 1805.200 and has submitted complete application materials. An Applicant that fails to meet the basic eligibility and application requirements will be notified of the reasons for such determination.

(b) *Tier II Review.* Tier II of the review process is intended to ensure that an Applicant meeting the Tier I requirements possesses the financial and organizational capacity to be a successful CDFI.

(1) The Fund will examine several criteria in evaluating financial and organizational capacity and an Applicant's likelihood of success in meeting the goals of its Comprehensive Business Plan. These criteria will include the strength and background of an Applicant's management team and other key personnel, the quality of its financial management policies and practices, breadth and depth of its financial resources, the depth of its market analysis, and trends in financial and operating performance.

(2) An Applicant that fails to meet the minimum requirements of Tier II will be notified of the reasons for such determination.

(c) *Tier III Review.* Tier III of the review process is intended to examine other qualitative aspects of an application. The Fund will rate each application meeting the Tier I and II requirements based on the selection criteria set forth in this part. The selection criteria and ratings will be considered in the following categories:

(1) *Organizational capacity.* The Fund will evaluate the information described in the Tier II review to rate an Applicant's organizational and financial strength and capacity.

(2) *External resources.* The Fund will evaluate the extent of external resources available to an Applicant based on:

(i) The amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the matching funds in a timely manner;

(ii) The extent to which the matching funds are, or will be, derived from private sources or new investments;

(iii) Whether an Applicant is, or will become, an Insured CDFI; and

(iv) The extent to which an Awardee will use assistance to expand the funds available for lending and equity investments beyond the sum of the award and the matching funds.

(3) *Community impact.* The Fund will evaluate an application's community impact based on:

(i) The extent of economic distress within the designated Investment Area(s) or the extent to which the designated Targeted Population(s) is Low-Income;

(ii) The extent to which an Applicant will concentrate its activities on serving Investment Area(s) or Targeted Population(s);

(iii) The extent of need for loans, equity investments, Development Services, and Financial Services within the designated Investment Area(s) or Targeted Population(s);

(iv) The extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities within the designated Investment Area(s) or Targeted Population(s);

(v) The extent of support from the designated Investment Area(s) or Targeted Population(s);

(vi) The extent to which an Applicant is, or will be, Community-Owned or Community-Governed;

(vii) The extent to which an Applicant will increase its resources through such means as a Community Partnership, participation in the secondary market,

and coordination with other institutions (e.g., a local Empowerment Zone or Enterprise Community coordinating entity), particularly other CDFIs; and

(viii) In the case of an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s), the extent of success in serving them.

(4) *Community Partnerships.* Community Partnerships will be rated based on the extent to which the Applicant and Community Partner meet the factors described in paragraphs (c) (1), (2) and (3) of this section and giving consideration to the extent to which:

(i) The Community Partner will participate in carrying out the activities of the Community Partnership;

(ii) The Community Partnership will enhance the likelihood of success of the Comprehensive Business Plan; and

(iii) Service to an Investment Area(s) or Targeted Population(s) will be better performed by a Community Partnership than by an Applicant alone.

(5) *Other factors.* The Fund may consider any other factors with respect to any application as it deems appropriate.

(6) *Priorities.* The Fund may give additional consideration to Applicants that:

(i) Have secured firm commitments for all of the matching funds at the time of submission of an application;

(ii) Concentrate their activities within an Investment Area(s) or Targeted Population(s); or

(iii) Dedicate the greatest portion of their total resources to lending, Development Investments, and Development Services.

(d) *Consultation with Appropriate Federal Banking Agencies.* The Fund shall 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; and

(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.

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

Subpart I—Terms and Conditions of Assistance

§ 1805.900 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement,

shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

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

§ 1805.901 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

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

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

- (1) Require changes in the performance goals set forth in the Assistance Agreement;
- (2) Require changes in the Awardee's Comprehensive Business Plan;
- (3) Revoke approval of the Awardee's application;
- (4) Reduce or terminate the Awardee's assistance;
- (5) Require repayment of any assistance that has been distributed to the Awardee;
- (6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or
- (7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be

enforceable under section 8 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

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

- (1) Objects to the proposed sanction;
- (2) Determines that the sanction would:
 - (i) Have a material adverse effect on the safety and soundness of the institution; or
 - (ii) Impede or interfere with an enforcement action against that institution by that agency;
- (3) Proposes a comparable alternative action; and
- (4) Specifically explains:
 - (i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and
 - (ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

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

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

§ 1805.902 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined

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

§ 1805.903 Data collection and reporting.

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

- (1) Disclose the manner in which Fund assistance is used; and
- (2) Demonstrate compliance with the requirements of this part and an Assistance Agreement.

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

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

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

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. During such review, the Fund may consider requests to modify Comprehensive Business Plans or performance goals.

(2) An Awardee shall submit a report within:

(i) 45 days of the end of each calendar quarter with information on the performance of its loans, Development Investments, Development Services, and Financial Services in the previous quarter, and unaudited financial statements. Such report shall include key indicators of portfolio performance, including volume of originations, delinquencies, and defaults, and charge-offs for the previous quarter; and

(ii) 60 days at the end of each Federal fiscal year with:

(A) Information on its customer profile and the performance of its loans, Development Investments, Development Services, and Financial Services for the previous year;

(B) Information on its portfolio performance, including volume of originations, delinquencies, and defaults and charge-offs for the previous year;

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

(D) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement;

(E) Certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and

(F) Its most recent audited financial statements prepared by an independent certified public accountant. Such statements shall cover the operations of the Awardee's most recently completed fiscal year. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Office's Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A-133 ("Audits of Institutions of Higher

Education and Other Nonprofit Institutions"), as applicable. The independent certified public accountant shall review and attest that an Awardee's use of Federal assistance is in compliance with the Assistance Agreement.

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

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

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

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

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

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the 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 Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of a Appropriate

Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

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

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

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

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

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503; and

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

§ 1805.904 Information.

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

§ 1805.905 Compliance with government requirements.

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

§ 1805.906 Conflict of interest requirements.

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

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

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

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

(iv) For credit of \$10,000 or more, the Awardee shall provide written notice to the Fund at least 30 days prior to initial disbursement and shall receive written approval from the Fund prior to any disbursement.

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

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

§ 1805.907 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 as are defined in 31 U.S.C. 1352.

§ 1805.908 Criminal provisions.

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

§ 1805.909 Fund deemed not to control.

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

§ 1805.910 Limitation on liability.

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

§ 1805.911 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**

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Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104-19, 109 Stat. 237 (12 U.S.C. 4703 note).

Subpart A—General Provisions**§ 1806.100 Purpose.**

The purpose of the Bank Enterprise Award program is to encourage insured depository institutions to make Equity Investments and engage in Eligible Development Activities.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

(1) Invest in Community Development Financial Institutions;

(2) Increase lending activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Generally, awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or

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

(b) *Matching funds.* Equity Investments and loans provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

(c) *CDFI certification.* Any entity receiving a CDFI certification under § 1805.201 of this chapter within two years of the filing an application for a Bank Enterprise Award shall qualify as a CDFI for the purposes of this part. If an Applicant is proposing to make an

Equity Investment in an entity that has not been certified as a CDFI, the application submitted by the Applicant under this part shall include a letter from the entity requesting certification and the information described in § 1805.701(b) of this chapter.

§ 1806.103 Definitions.

For the purpose of this part:

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

(b) *Agricultural Loan* means a new origination (including refinancing) of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *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;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a contract between the Fund and an Awardee pursuant to § 1806.300;

(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

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

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means a new origination (including refinancing) of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means a new origination (including refinancing) of a loan (other than a Multi-Family Loan or a Single Family Loan) used to finance:

(1) Construction and land development; or

(2) Commercial real estate in amounts of more than one million dollars and which is secured by real estate;

(m) *Community Development Financial Institution* (or *CDFI*) means an entity certified under § 1805.201 of this chapter and that meets the eligibility requirements under § 1805.200 of this chapter;

(n) *Consumer Loan* means a new origination (including refinancing) of a loan to one or more individuals for household, family, or other personal expenditures;

(o) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(p) *Eligible Development Activities* means activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(q) *Equity Investment* means new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), or a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency);

(r) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other services as may be specified by the Fund;

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

(t) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund);

(u) *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 corporation, 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;

(v) *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));

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

(x) *Multi-Family Loan* means a new origination (including refinancing) of a loan secured by a five- or more family residential property;

(y) *Qualified Activities* means Equity Investments and Eligible Development Activities;

(z) *Resident* means an individual domiciled in a Distressed Community;

(aa) *Single Family Loan* means a new origination (including refinancing) of a loan secured by a one-to-four family residential property;

(bb) *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; and

(cc) *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 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notice 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 OMB control

number 1505-0153 (expires September 30, 1998).

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out Eligible Development Activities, or Equity Investments that support efforts of a CDFI in a Distressed Community, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the minimum area eligibility requirements contained in this paragraph.

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii)(A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) Is located entirely within an Indian Reservation.

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

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as determined by the U.S. Bureau of the Census in the 1990 decennial census; and

(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 recent data.

(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; 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 and notification process.* Upon request, the Fund will provide a prospective Applicant with data to help it identify areas eligible to

be a Distressed Community. A prospective Applicant may contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

§ 1806.201 Qualified Activities.

(a) *Equity Investment.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment during an Assessment Period.

(b) *Eligible Development Activities.*—
(1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Eligible Development Activities during an Assessment Period.

(2) *Service.* The Eligible Development Activities listed in paragraphs (b)(4)(i) through (vii) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low- and Moderate-Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Eligible Development Activity is assigned a priority factor. A priority factor represents the 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.

(4) *Eligible Development Activities.* Eligible Development Activities are listed in this paragraph with their corresponding priority factors:

(i) Consumer Loans (priority factor=1.2);

(ii) Commercial Real Estate Loans (priority factor=1.6);

(iii) Single Family Loans (priority factor=1.4);

(iv) Multi-Family Loans (priority factor=1.6);

(v) Business Loans and Agricultural Loans of \$100,000 or less (priority factor=1.9);

(vi) Business Loans and Agricultural Loans of more than \$100,000 through \$250,000 (priority factor=1.8);

(vii) Business Loans of more than \$250,000 through \$1,000,000 and Agricultural Loans of more than \$250,000 through \$500,000 (priority factor=1.7);

(viii) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor=1.0);

(ix) Financial Services provided to Low- and Moderate-Income persons in the Distressed Community or provided to enterprises integrally involved in the Distressed Community (priority factor=1.2);

(x) Provision of technical assistance to Residents in managing their personal finances through consumer education programs (either sponsored or offered by the Applicant) (priority factor=1.4);

(xi) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community (priority factor=1.4);

(xii) Provision of technical assistance to, or servicing the loans of, Low- and Moderate-Income home owners and home owners located in the Distressed Community (priority factor=1.4); and

(xiii) Grants used to support the operating costs of, new origination (including refinancing) of loans to, or technical assistance provided to:

(A) A CDFI that supports efforts in the Distressed Community (priority factor=2.2); and

(B) Any other CDFI (priority factor=2.0).

§ 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline and Assessment Periods will be used in determining award amounts. Applicants shall report their activities in all categories of Qualified Activities for the Baseline and Assessment Periods. The dates of the Baseline Period and the Assessment Periods will be published in the NOFA for each funding round.

(b) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans and grants at the original amount of such investments, loans or grants;

(2) Deposit liabilities at the face dollar amount of monies deposited; and

(3) Financial Services and technical assistance based on the administrative costs of providing such services.

(c) *Reporting.* An Applicant shall report Qualified Activities:

(1) That were carried out during the Baseline Period; and

(2) Proposed to be carried out during the Assessment Period.

§ 1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment

between the Baseline and Assessment Periods.

(b) *Eligible Development Activities.* The estimated award amount for Eligible Development Activities will be calculated as follows:

(1) *Step 1.* For each type of Eligible Development Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Eligible Development Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities and Financial Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Eligible Development Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score. (The Act prohibits an Applicant from receiving more assistance for its deposit taking activities than for other Qualified Activities.);

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:

(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

§ 1806.204 Selection process.

(a) *Availability of funds.* All awards are subject to the availability of funds. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories.*—(1) *General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the following priority categories:

(i) *First priority.* Equity Investments that support efforts of CDFIs in the Distressed Community;

(ii) *Second priority.* Other Equity Investments; and

(iii) *Third priority.* Eligible Development Activities.

(2) *Ranking among categories.* All Applicants in the first priority category

will be selected as Awardees before Applicants in the second priority category, and Applicants in the second priority category will be selected as Awardees before Applicants in the third priority category. Selections within each priority category will be based on the relative rankings within such category, subject to the availability of funds.

(3) *Combined awards.* If an Applicant receives an award for more than one priority category described in paragraph (b)(1) of this section, the award amounts will be combined into a single Bank Enterprise Award.

(c) *Ranking Equity Investments.* Estimated awards for Equity Investments will be ranked within each applicable priority category based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). For Applicants that propose the same percentage, estimated awards will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(d) *Ranking Eligible Development Activities.* Estimated awards for Eligible Development Activities will be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

§ 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period. Subject to § 1806.204, the actual award amount that an Awardee shall receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Substantial achievement.* If an Awardee carries out 90 percent or more of its projected activities, it will be deemed to have substantially achieved those activities. Such Awardee will receive the full estimated award amount.

(c) *Partial achievement.*—(1) *General.* If an Awardee carries out less than 90 percent but at least 75 percent of its projected Qualified Activities, it will be deemed to have partially achieved those activities. In such cases the Fund may, in its sole discretion, provide a partial award based upon (among other things) the Awardee's satisfactory explanation for its failure to substantially achieve the activities projected in its application. Any estimated award amount will be adjusted on a pro rata basis to reflect the activities actually performed.

(2) *Adverse change in condition.* In the case of an adverse change in national or regional economic conditions, the Fund may adjust the percentages used to define partial achievement.

(d) *Non-achievement.* If an Awardee does not satisfy the conditions necessary for substantial or partial achievement, it will be ineligible to receive any award amount.

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

(1) Using the calculation and selection process contained in this part—

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or

(ii) To select Applicants not previously selected;

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

(3) As otherwise authorized by the Act.

§ 1806.206 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the Federal Register. The NOFA will advise potential Applicants on how to obtain an application packet and will establish submission deadlines. The NOFA also will establish any other requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which may include:

(1) A completed Bank Enterprise Award Rating and Calculations worksheet;

(2) A narrative description of each of the Qualified Activities expected to be performed in the Assessment Period;

(3) If applicable, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

(4) If applicable, a narrative description of each CDFI that the Applicant proposes to provide an Equity Investment in and the amount, terms, and conditions of the investment;

(5) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report to its Appropriate Federal Banking Agency;

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

(7) Certifications 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.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee:

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

(2) Shall comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the Award and pursue any other available legal remedies.

(c) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the 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 with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.301 Records, reports and audits of Awardees.

(a) At the end of an Assessment Period, each Awardee shall submit to the Fund:

(1) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(2) *Estimate of benefits.* An estimate of the benefits generated within the Distressed Community by the Qualified Activities that were carried out during the Assessment Period, as measured by the:

(i) Number of jobs created or retained;

(ii) Type of new financial and technical assistance services available;

(iii) Number and type of businesses created and retained;

(iv) Number of home owners assisted;

(v) Number of affordable housing units financed;

(vi) Number and type of new deposit accounts opened at offices located within the Distressed Community; and

(vii) Other measures deemed appropriate by the Awardee that convey the nature or extent of the benefits created by the Qualified Activities; and

(3) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period.

(b) *Additional information.* At the request of the Fund, the Applicant shall make available any records necessary to assess the validity of the information provided to the Fund.

§ 1806.302 Compliance with government requirements.

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

§ 1806.303 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.

§ 1806.304 Books of account, records and government access.

An Awardee 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 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 Awardee's offices and facilitates 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.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503.

PART 1815—ENVIRONMENTAL QUALITY

Sec.

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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).

§ 1815.100 Policy.

The Community Development Financial Institution Fund's policy is to ensure that environmental factors and 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;

(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 decisionmaking 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 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 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 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 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 N.W., room 5116, Washington, DC 20220, or such other contact entity designated by the Fund.

§ 1815.114 Fund decisionmaking procedures.

To ensure that at major decisionmaking 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).

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