



MEMORANDUM

TO: Annie Donovan, Director CDFI Fund
FROM: CDFI Coalition
RE: Modernizing the CDFI Certification Process
DATE: May 6, 2016

BACKGROUND

In March 2015, the CDFI Coalition prepared a paper reviewing the CDFI Fund's (the "Fund") statute¹ and regulations² with respect to the subject of certification of community development financial institutions (CDFIs). The purpose of that review was to identify which elements contained within the current guidance applied by the Fund in the course of certifying CDFIs are required by either the statute or the regulations.

The CDFI Coalition undertook that review because of concerns expressed during the Fund's 2013 re-certification effort when over 500 CDFIs were required to submit recertification applications and numerous problems were experienced. The need for a review of certification policies was reinforced by the Fund's 2014 proposal to require an annual report from certified CDFIs to confirm that organizations remained compliant with certification requirements,³ and that concern did not abate as a result of the CDFI Fund's Focus Group on an annual CDFI reporting form in May.

The CDFI Coalition supports efforts by the CDFI Fund to tighten the certification process, particularly efforts to ensure that only mission-based financing entities that are demonstrably serving underserved markets and populations, and that are accountable to those markets, receive a certification designation. That being said, compliance with certification requirements should be modernized, be made less burdensome, and more transparent.

The need for a rigorous yet efficient certification process is underscored by the fact that certification as a CDFI is no longer simply a prerequisite for receiving funding under the CDFI Program. CDFI certification now provides an access point to other sources of funding, both within the CDFI Fund (the CDFI Bond Guarantee Program, Bank Enterprise Award Program, New Markets Tax Credit Program, and Capital Magnet Fund); as well as outside of the CDFI Fund (e.g., membership in the Federal Home Loan Bank system, participation in the State Small Business Credit Initiative, the SBA's Community Advantage Pilot program, certification under state CDFI programs, and consideration for certain investments under the Community Reinvestment Act).

¹ Public Law 103-325, Community Development and Regulatory Improvement Act of 1994

² 12 C.F.R. Part 1805, §§1805.100-1805.812

³ Federal Register notice and request for comment by CDFI Fund, Vol. 79, No. 131 / Wednesday, July 9, 2014

In addition, there is also a need for greater transparency in both the certification and re-certification process, with clear guidance on whether CDFIs are meeting the certification requirements as a matter of ongoing compliance, including which data points need to be collected and which records need to be retained to demonstrate compliance.

The issues, and in some cases recommended changes to the certification process, that the CDFI Coalition proposes in this memorandum are all within the CDFI Coalition's understanding of what is statutorily permissible. In certain instances, the recommendations require waiver of or changes to the CDFI Fund's regulations. The relevant statutory provisions and regulations are included in an Appendix to this paper. The issues are presented in the order that the Fund currently presents the certification requirements, and have been cast as though being applied to first time certification applicants, with occasional references to re-certification. The issues to be resolved and the recommendations would apply to both new applicants and to applicants seeking recertification.

DISCUSSION AND RECOMMENDATIONS

PRIMARY MISSION

The determination that an organization is mission-driven is seminal and a critical issue in determining which groups should be certified and whether a CDFI should be recertified. The statute does not define "primary mission" other than stating that CDFIs must have a primary mission of promoting economic revitalization and community development. The Fund's regulations state that "the Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people...."⁴ The Fund's certification materials require simple documentary evidence, such as inclusion of language stating a community or economic development mission in articles of incorporation or board resolutions, together with a narrative description in the certification application.

RECOMMENDATION:

We recommend that, for the purpose of the primary mission test, all CDFIs (not just banks and bank holding companies, as is currently required by the statute) demonstrate that their parent and affiliate organizations taken collectively are mission-focused; and that a more robust set of factors be reviewed in making the determination whether an organization exhibits sufficient attributes of being mission-driven to be certified as a CDFI. There should be two steps to the determination that an organization as a primary mission of community and economic development:

- Do the applicant and its affiliates and subsidiaries together collectively demonstrate a primary mission of serving low income persons or carrying out their activities in CDFI-qualifying low income census tracts? The regulations require that depository CDFIs meet the tests for certification based on the entirety of their activities, including those of affiliates.⁵ This provision prevents mainstream insured depository institutions from obtaining certification for bank-affiliated community development entities. However, the converse is not true and the Fund has the authority to apply the same test to all applicants for certification.

Current policy allows organizations that have no particular mission focus to create subsidiaries or affiliates that can be certified as CDFIs under the current policies. Requiring that every applicant seeking certification be assessed taking mission elements of affiliates/subsidiaries into account is consistent with the policy reasons for the test for insured depository institutions. We recommend that, with respect to the primary mission test, all applicants for certification be required to meet the criteria currently applied to insured depository institutions.

⁴ 12 CFR §1805.201(b)(1)

⁵ 12 CFR §1805.200(b)

- It is important that there be documentation that an organization has a mission of community and economic development as the Fund currently requires. However, such documentation while necessary should not be the sole determinant of whether an organization will have, or has carried out its community and economic development mission. We recommend that the Fund seek public comment on the factors to be considered or additional materials or data to be submitted regarding mission focus for first time applicants for certification as well as for CDFIs seeking recertification.

New applicants may or may not have an operating history that demonstrates a mission focus. Existing CDFIs across the sectors of banks, credit unions, loan funds and venture funds may adopt different means to carry out their mission of promoting community and economic development. At a minimum, the Fund should require CDFIs to provide a narrative of how their organization as a whole (where there are affiliates or subsidiaries) and the CDFI has or will carry out its community and economic development mission. For existing CDFIs, the Fund could require a narrative covering both the period since certification was last obtained and whether any changes are proposed for the 3 year period for which recertification is requested.

FINANCING ENTITY

WHAT ACTIVITIES SHOULD BE INCLUDED IN A CDFI'S FINANCING ACTIVITIES?

A threshold issue to assessing whether an applicant should be certified as a CDFI is deciding what counts as financing activities.

Neither the statute nor the regulations require the Fund to exclude subsidiaries from being considered as part of a certified CDFI's activities or to require them to be separately certified as CDFIs. The statute merely addresses subsidiaries with respect to insured depository institutions and holding companies; preventing subsidiaries or affiliates of such institutions from becoming CDFIs unless the affiliates or subsidiaries collectively meet certification requirements, as noted above.

A non-regulated institution (e.g., a mission focused loan fund) should be given the option of including activities of subsidiary entities, to the extent that those activities are relevant to their financing or services activity in assessing their CDFI activities. For examples, CDFIs have created separate legal entities to carry out their State Small Business Credit Initiative work. Because the work is done by a subsidiary it cannot be included in their CDFI activity in their Financial Assistance Applications⁶ under the Fund's current policies, thus understating the level of activity to underserved markets.

RECOMMENDATION:

The Fund should reduce this burden, creating a more accurate view of a CDFI's work by allowing the consolidation of the activities of mission-aligned wholly-owned subsidiaries that are carrying out aspects of the CDFI's financing or services activity. Applicants for certification may, at their discretion if needed to meet CDFI certification requirements, include those activities which are directly related to carrying out their CDFI mission and which appear on their consolidated financial statements. During the initial certification process as well as in periodic reports, such CDFIs could be required to explain how activities undertaken through subsidiaries or other off-balance sheet mechanisms are related to their mission and are part of their CDFI activities. If an organization chooses to include subsidiary financing activities as part of its CDFI work, it should be required to include all subsidiaries with financing activity.

⁶ See line 281, FA Excel Worksheet, Tab 1, Submission Instructions

ARM'S LENGTH TRANSACTIONS

The Fund's regulations require that a CDFI be a financing entity, that is, "an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing."⁷ The Fund does not define "predominant" in its regulations or certification application materials although it is generally understood to mean more than 50%. Similarly, there is no definition of "arms-length" transactions or what is meant by "other similar financing."

RECOMMENDATION:

The Fund should retain the general rule that CDFIs offer their financial products (and financial services- see below) to third parties with whom neither the CDFI nor any of its affiliates has a financial relationship. Having said that, some related party transactions should be permissible. For example, some CDFIs make pre-development loans to affordable housing projects that an affiliate may later syndicate through the Low Income Housing Tax Credit Program, through which 98% or more of the ownership is transferred to third party investors. The Fund's guidance should be clear that such transactions are not regarded as transactions between related parties. On the other hand, if a CDFI or its affiliates will retain more than a de-minimums ownership interest in a project, such loans should be considered related party transactions, and should not be counted for purposes of satisfying the Financing Entity test.

TARGET MARKET

The Fund's statute requires that CDFIs serve investment areas or targeted populations.⁸ The Fund's regulations define a Target Market as an Investment Area and/or a Targeted Population.⁹ The regulations define Targeted Population as individuals meeting certain requirements.¹⁰

PERCENTAGE OF ACTIVITIES IN A TARGET MARKET

Neither the statute nor the regulations states what percentage of a CDFI's activities must be devoted to one of the Target Markets. The Fund's guidance in completing a certification application states that 60% of a CDFI's "Financial Product" activities must be in qualified Target Markets (Investment Areas, Low Income Targeted Populations or Other Targeted Populations)¹¹. Since August 31, 2015, the Fund includes financial services in its test¹². However, the test does not include the costs or number of clients served by development services. The impact of the current approach can be seen, in the fact that the Fund did not designate some CDFIs for all the Target Markets they requested during the recertification process in 2013.

Until or unless a CDFI can add all requested markets, the 60% test is applied only to those activities in the approved Target Markets. Thus, a CDFI that is certified for a Low Income Targeted Population (LITP) nationwide cannot include, for purposes of meeting the 60% test, loans made to borrowers in qualified CDFI census tracts or to certain populations that are not also low income. The portfolio analysis needed for parsing what can be reported as CDFI activity consistent with the approved Target Markets is burdensome, and could put

⁷ 12 CFR §1805.201(b)(2)

⁸ 12 USC § 4702 (5)(A)(ii)

⁹ 12 CFR §1805.104(ll)

¹⁰ 12 CFR §1805.104(kk)

¹¹ CDFI Fund Supplemental Guidance and Tips (February 2014) p. 20.

¹² 12 CFR §1805.201(b)(2)(i) has amended the prior regulation to state: "a CDFI Shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products and/or Financial Services."

some CDFIs at risk of not meeting the 60% test even though they are in fact lending in CDFI-designated Target Markets.¹³

RECOMMENDATION:

We recommend that CDFIs that have submitted modifications to their Target Markets to the CDFI Fund be able to include any activity in that modified, even if the CDFI has not yet been approved for those specific markets. With respect to the 60% benchmark, we recommend that it be just that, a benchmark, not a hard and fast compliance requirement that puts certification at risk if not met. The CDFI Fund should assess whether 60% of an organization's activities, as measured by the volume of financial products or financial services is directed to its Target Market. In cases where a CDFI has failed to meet the 60% threshold through the dollar volume percentage of transactions, the CDFI Fund should consider additional information (e.g., the percentage of development services directed to the Target Market), especially in cases where the CDFI has narrowly missed out on meeting the 60% threshold and/or it can reasonably be expected that the CDFI will in the future be above the 60% threshold for its financial products and services. Regardless, if a currently certified CDFI does not meet the bar when it comes in for a re-certification review, it should be a matter of discussion with the CDFI Fund, not an automatic determination that the group is no longer a CDFI.

WILLINGNESS TO SERVE A TARGET MARKET

The Fund's statute and regulations allow CDFIs to "serve" underserved markets. The Fund has restrictively interpreted "serve" to mean that a CDFI cannot be certified for an area that it is willing to serve, instead, current policy is that the CDFI must have actually made a loan or investment in the area. Providing development services to an area is not sufficient. If the Fund's current policy is carried to its logical conclusion, it raises the issue of what happens when a CDFI's loans in a particular area are paid off? Is that area no longer part of the Target Market? Does the CDFI need to "de-certify" that area with the Fund through a reverse amendment process? This subject could easily lead to excessive and unnecessary rules and modification processes.

RECOMMENDATION:

Because such issues relate to whether a CDFI is in compliance with certification requirements, we recommend that CDFIs be required to demonstrate that 60% of their activities, including financial products and financial services by dollars, transactions and clients served, are directed to low income people, CDFI qualifying low income census tracts, or qualified "other" targeted populations.

CDFIs should be able to include the markets they hold themselves out as willing to serve, not simply those in which they already have undertaken financing activities – as long as they can demonstrate Accountability to those Target Markets. The 60% benchmark should be assessed on the basis of a CDFI's US activity as the statute has no applicability to non-US markets. CDFIs that find they need to amend Target Markets (they are no longer willing to serve a particular market or they have expanded their service area to cover new markets) should be allowed to count them in their approved Target Markets unless the Fund objects to the amendment within 60 days.

TIME AND FREQUENCY OF DETERMINING ACTIVITIES IN A TARGET MARKET

The 60% benchmark requires certainty as to when it is applied. Should it be a one-time annual test, a 3-year rolling average test, or an average over some other period of time or some other measure?

¹³ The CIIS directions should be clarified. For example, the CIIS TLR Instructions (September 2014) states that all lending and investment activity should be reported (p 6), but when the CIIS report later asks for the activities to be categorized into one or more of the Target Markets, only with respect to the Other Targeted Populations is the CDFI directed to refer to their Certification or Assistance Agreements (p 30).

RECOMMENDATION:

The 60% benchmark should be a rolling average over the one year period of a CDFI's designated fiscal year.

DESIGNATION OF TARGETED POPULATIONS

The regulations do not develop the full potential of the statute, which states that a targeted population can be a low income person or someone who "otherwise lacks adequate access to loans or equity investments."¹⁴

The Fund's regulations and its guidance have limited the "otherwise lacks adequate access" language to African Americans and Hispanics and Native groups, and, on a case by case basis, other collections of individuals such as women, Asians and the like on a market specific basis.

The Fund's statutory language is broad enough to allow the Fund to include other populations that have been found to lack access to credit and capital by other federal agencies. For example, the SBA has established a Council on Underserved Communities to examine the obstacles for obtaining credit faced by small businesses.¹⁵ In addition, the SBA has studied the fact that women, minorities generally, and persons with disabilities have a disproportionately harder time accessing credit and capital.¹⁶

Taking a broader interpretation, the Fund could determine, for example, that persons with credit scores below a certain level, persons or businesses with combined assets below a certain amount, loans under a certain size, or years of operations are indicators that a borrower lacks access to credit and capital. The Fund could draw on research that demonstrates borrowers with certain attributes cannot obtain credit from traditional lenders. For example, lenders might agree that a FICO score below 550 would prevent a borrower from obtaining credit conventionally.

RECOMMENDATION:

The Fund should work with other federal agencies such as the Small Business Administration and US Department of Agriculture to set uniform standards, insofar as their statutes allow, to identify categories of borrowers determined to lack of access to credit and capital consistently across agencies. In addition, the Fund should work with the regulators of financing entities, such as the Federal Deposit Insurance Corporation, Comptroller of the Currency, National Credit Union Administration, and Board of Governors of the Federal Reserve to set thresholds that such bodies agree take borrowers out of the reach of conventional lenders such as credit scores that alone, or in combination with other attributes, such as gender, race and ethnicity, and such currently identified groups as veteran-owned businesses shows borrowers to be underserved.

INVESTMENT AREAS

The Fund's statute defines Investment Areas as geographic areas that meet objective criteria for distress, which are to be developed by the Fund, and have unmet needs for capital or are located in an empowerment zone or enterprise community.¹⁷ The regulations¹⁸ provide the Fund's view on what those objective criteria should be, and they set forth the requirements that Investment Areas must be census tracts, that they must be contiguous, and that the population not meeting the poverty, income or unemployment distress criteria cannot exceed 15% of the total population in the census tract. In addition, the regulations include out- migration and population loss as evidence of distress.

¹⁴ 12 USC §4702(20)(A) & (B)

¹⁵ <https://www.sba.gov/about-sba/sba-initiatives/council-underserved-communities-cuc>

¹⁶ *Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables*, SBA Issue Brief Number 3, Christine Kymn, January 29, 2014

¹⁷ 12 USC §4702(16)

¹⁸ 12 CFR §1805.201(b)(3)(ii)(C)(2)

The regulations seem to contemplate very small, place-based lenders as a result of the contiguous census tracts requirement. Many CDFIs serve all the low income census tracts in a city or a region, but cannot do so in a straightforward way because of the regulations (see Contiguous Census Tracts, below). Also, as the CDFI movement has grown, there are a number of CDFIs that focus on particular types of borrowers (small business, micro business, and affordable housing developers, charter school lenders) that may be less connected to a particular geographic location. In addition, with web-based lending platforms, CDFIs can theoretically serve much, if not all, of the nation and provide much more convenient service than through place-based offices. This is a problem for business lenders in particular. The housing or community facilities CDFI lenders are serving low income people as “end-beneficiaries”, and they tend to follow a LITP path to their Target Market through which the Fund is willing to certify CDFIs with a national LITP Target Market. (See End Beneficiaries. below)

However, if the CDFI is a business lender and wants to serve Investment Areas, the Fund has resisted certifying CDFIs for large numbers of states. To our knowledge, no CDFI serving Investment Areas has been certified for more than 20 states. In a lending environment where CDFIs are operating regionally, or even nationally, this policy retards growth.

RECOMMENDATION:

The Fund should simply waive the contiguous census tract rule in its regulations to solve this problem until such time as the regulations can be amended to remove the requirement.¹⁹ The Fund should look to the CDE service area requirements as a model for CDFIs to serve Investment Areas.

(1). Contiguous Census Tracts. Seemingly as a work-around to the Investment Area regulations requiring contiguous census tracts, the Fund has provided CDFIs the option to select a state-wide Target Market. For example, a CDFI that wants to make loans to businesses located in low income communities in a particular metropolitan area, such as New York City is constrained by the rules that require that the census tracts be contiguous. So the state-wide option initially looks like a good solution. However, while a CDFI can opt for a state-wide Investment Area²⁰ and solve the contiguous census tracts problem, if the CDFI opts for all of New York, it must then show it is “accountable” statewide, even though it wants to lend only in New York City. This may require a CDFI to change its Governing Board composition to reflect a statewide composition rather than a city-wide composition, or to pursue another avenue to demonstrate accountability.

(2). Narrative Demonstrating Unmet Needs. The statutory requirement that an Investment Area have unmet needs for capital or be part of an empowerment zone or enterprise community, suggests that the legislators did not intend to limit CDFIs to discrete geographic locations such as census tracts but expected them to serve areas recognized as distressed on other grounds. The regulations put the requirement to demonstrate that distress on certification applicants requiring “a narrative analysis provided by CDFI certification applicants that adequately demonstrate a pattern of unmet needs for Financial Products or Financial Services within such areas.”²¹

Given the amount of research undertaken and published by the various Federal Reserve banks, the Board of Governors, bank and credit union regulators, the SBA, the Appalachian Regional Commission, and other researchers, it would seem that there are other approaches to determining that there are unmet needs for credit and capital. Further, because the statute is silent on this issue, there is no requirement that the regulations²² need

¹⁹ 12 CFR §1805.105 authorizes the Fund to waive any provision of its regulations for good cause

²⁰ Designating a Target Market in myCDFIFund, p 19.

²¹ 12 CFR §1805.201(b)(3)(ii)(E)

²² Id.

to put the onus on the certification applicant for preparing such research. The Fund is in at least as good a position to identify what people, communities and specially designated areas lack access to credit and capital, as are the other financial institution regulatory agencies. As with other issues raised in this paper, this also becomes a compliance issue as it is unclear whether or how often an individual CDFI is required to update such analysis to remain compliant with certification requirements.

(3). End- Beneficiaries. The Fund’s regulations, but not the statute, introduce the concept of serving Investment Areas or Targeted Populations indirectly through borrowers or investees that provide benefits to residents or low income people who will benefit from the activity.²³ The regulations are silent as to how the concept of looking through to “end beneficiaries” is to be managed as a matter of compliance. Does it mean that CDFIs can count 100% of a loan made to an affordable housing project even if less than 100% of the units will be affordable? How is the concept of end-beneficiaries to be applied for other project types, such as community facilities? For example, can the number of free or reduced lunches to students be a proxy for a charter school serving low income persons? What if a community facility does not track whether its users are low income or from particular ethnic groups? What evidence does a CDFI need to collect and maintain to support inclusion of end beneficiaries in its Target Market lending?

Similarly, there is no guidance for CDFIs that make business loans or investments that can demonstrate their borrowers are hiring low income people, or people living in low income communities, offer good wages or benefits or providing products or services to low income people, which are the primary direct economic development outcomes of such loans.²⁴ Currently, the Community Investment Impact System (“CIIS”) asks CDFIs to report numbers of jobs and does not request information on incomes of employees.

Given the Fund’s stated goal of implementing a report that effectively re-certifies CDFIs annually, there needs to be clear guidance so CDFIs know what they must do to remain certification-compliant if serving a Target Market through the end beneficiaries’ path. We recommend that the Fund request public comment on whether the end-beneficiary concept is necessary, and what other mechanisms might be used as an alternative. It may be possible that certain types of projects could categorically be deemed to be serving low income end beneficiaries without documentation of the status of individuals. For example, any housing project which will have at least 20% of the units restricted to persons at or below 80% of AMI could qualify. While Investment Areas are another path to serving a Target Market, many CDFIs lend to underserved borrowers/projects that are not located in low income census tracts. Solutions to a manageable implementation of Target Markets outside of low income census tracts should be designed to minimize the data that needs to be collected and maintained to comply with certification requirements. While impact information such as resident/user incomes or employee benefits are important, it may be better to move such matters to a system of impact measurement and not whether a CDFI is complying with certification requirements.

ACCOUNTABILITY

The statute requires a CDFI to maintain accountability to the investment area or targeted population it serves through its “governing board or otherwise.”²⁵ The regulations are similarly broad, “A CDFI must maintain accountability to residents of its Investment Areas or Targeted Population(s) through representation on its governing board or otherwise.”²⁶ The complex rules that have been created by the Fund to meet the board accountability requirement are not a function of the statute or the regulations.

²³ 12 CFR§1805.201(b)(3)(ii)(F) and (iii)(B)

²⁴ In fact, job creation is a specific eligible use of a Financial Assistance award in 12 CFR 1805§301

²⁵ 12 USC §4702(5)(A)(iv)

²⁶ 12 CFR§1805.201(b)(5)

The Fund’s approach has been to differentiate between accountability to Investment Areas and/or Targeted Populations with different guidance depending on the type of Target Market. In our view this makes an unnecessary distinction between board members who are employees or board members of charitable groups that serve low income people, versus those that serve an entire low income community.²⁷ Moreover, the Fund has not issued guidance on what percentage of such board members are needed to satisfy the accountability rules.

RECOMMENDATION:

GOVERNING OR ADVISORY BOARD ACCOUNTABILITY

We recommend that the Fund take the same approach to qualifications of board members for accountability purposes in the CDFI certification process as it does in the certification process for Community Development Entities (CDEs) in the New Markets Tax Credit program. To be a certified CDE 20% of the governing or advisory board members must be accountable and can be accountable to larger geographic areas.²⁸ For CDE certification a governing or advisory board member can be “an employee or board member of a non-affiliated community-based or charitable organization that provides more than 50 percent of its activities or services to Low-Income Persons and/or LICs [Low Income Communities]”²⁹.

ACCOUNTABILITY THROUGH CUSTOMER SURVEYS, COMMUNITY MEETINGS OR FOCUS GROUPS, OR OTHER MEANS

The certification application currently allows applicants to use Customer Surveys, Community Meetings or Focus Groups³⁰ to show accountability, and it may be that the CDFI Fund is overlooking other means that may be available to also demonstrate accountability, which applicant CDFIs currently can discuss in the narrative portion of the application.

However, the 2015 Interim Rule has eliminated such “other” means,³¹ and solely considers representation on governing or advisory boards. We agree that such board representation should be a required aspect of the certification determination, but in cases where CDFIs cannot or prefer not to meet the accountability requirements through board representation alone, they should be given the opportunity to demonstrate that they satisfy the accountability requirements through other means, including customer surveys.

²⁷ In the Guidance, the Fund indicates that for Investment Areas, Residents of the Investment Area, business owners and both elected officials and individuals who work for (as employee or board member) an organization that primarily provides services to residents of the Investment Area can qualify, but for Low Income Targeted Populations it is only low income people who live in the area or individuals who work for (as employee or board member) an organization that primarily provides services to Low-Income people in the area served. For Other Targeted Populations the board member must be a member of the particular group who lives or is working the area

²⁸ In the Fund’s CDE Certification Question and Answer guidance, the Fund directly addresses having board members accountable to large regions or nationwide: “26) ***How do I demonstrate accountability to LICs in my service area if I am serving a large geographic area (e.g., a state, a multi-state region or the entire nation)?***”

The Fund advises entities that serve a large geographic area should appoint at least one person that is accountable to LICs throughout the service area to its board or advisory board. For example, an organization serving the entire nation should appoint to its board a staff person or a board member from a nationwide community development organization primarily serving LICs.

An organization without at least one person on its governing board or advisory board(s) that can reasonably be deemed to be representative of LICs throughout the organization’s service area may still be certified as a CDE, provided that the Fund determines that at least 20% of its governing board or advisory board(s) is representative of a cross-section (e.g., urban and rural) of LICs in its service area. Determinations regarding what constitutes a cross-section of a particular service area will be made on a case-by-case basis by the Fund. Organizations, particularly those serving multi-state geographies, may wish to establish multiple advisory boards in order to meet this requirement.

²⁹ CDE Certification Board Table pdf, accessed on the Fund’s CDE certification page August 14, 2015

³⁰ Certification Application, page 13

³¹ 12 CFR §1805.201(b)(5), Interim Regulations August 31, 2015

RECOMMENDATION:

We encourage the CDFI Fund to request public comments on whether customer surveys or other mechanisms are needed by CDFIs to demonstrate accountability.

DEVELOPMENT SERVICES

The Fund’s statute defines development services³² and states that the very term “community development financial institution” means a person (other than an individual) that ...provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate.”³³ The regulations describe a broader set of activities that can be considered as part of “development services”³⁴ The statute and the regulations both use the term “integral”. However, neither the statute nor the regulations explicitly states that there be a corresponding development service for each financial product.

As CDFIs have evolved, not all borrowers need the same type or level of development services for each and every loan product a CDFI offers. For example, not all developers who borrow funds for affordable housing need counseling on how to use the funds or run their businesses, and even more so if they are repeat borrowers.

The Fund’s certification application tacitly recognizes this and does not ask applicants to describe how each loan product is accompanied by a corresponding development service. Instead, the excel workbook asks what development services are offered and the loan product to which it relates. The guidance states that an applicant must provide “at least one” development service.³⁵

RECOMENDATION:

We recommend that the Fund ask certification applicants whether development services are needed for the anticipated borrowers of their loan products, and if not, why not. The Fund should assess and ensure that Development Services are being offered for borrowers for whom development services are integral – that is, a particular form or type of development service is needed by the borrower to enable the borrower to successfully use the financial product, for example new affordable housing developers, first time homebuyers, and most micro loan borrowers.. In addition, applicants that offer financial counseling services, regardless of whether they are linked to a specific loan product, should be considered as offering development services.

Fund guidance on development services is needed so that CDFIs which legitimately are not offering such services are not exposed to a compliance risk, while ensuring that development services are being offered to borrowers, investees or financial services customers who need them.

³² 12 USC § 4702(9) **Development services**

The term “development services” means activities that promote community development and are integral to lending or investment activities, including—

(A) business planning;

(B) financial and credit counseling; and

(C) marketing and management assistance.

³³ 12USC §4702 5(A)(iii)

³⁴ 12 CFR §1805.104(s) states: *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products or Financial Services of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills.

³⁵ CDFI Certification Application Supplemental Guidance page 34

GOVERNMENT ENTITIES

By statute, the Fund must ensure that CDFIs are not an agency or instrumentality of the United States, or of any State or political subdivision of a State.³⁶ The Fund's series of yes or no questions are not sufficiently probing to determine if a potential applicant is so enmeshed with a state or local economic or community development agency to an extent they should be considered part of such an agency.

RECOMMENDATION:

The Fund should add questions to elicit further information on the relationship with governmental entities. Those questions should include whether the potential CDFI works closely with city, county or state agencies, whether the CDFI manages any of their loan funds, and whether any government official can veto the CDFI's loan decisions. They should also include an open-ended question that asks applicants to describe their relationships with city, county or state agencies and the extent to which the applicant coordinates its lending activities with such agencies. If the Fund adopts our recommendation that part of the certification review process will include a review of the applicant's website, Fund staff may have additional questions based on relationships noted with government agencies on the applicant's website.

ACHIEVE EFFICIENCIES IN THE APPLICATION PROCESS WHERE APPROPRIATE

As a guiding principal, the CDFI Fund should only collect the minimum information necessary under each certification criterion to determine whether the applicant satisfies the certification test. And in cases where an entity does not satisfy the test based on the minimum information required, then the applicant should be afforded an opportunity to provide additional information for the CDFI Fund's consideration. This will minimize burdens for both applicants and the CDFI Fund review staff. We offer some examples of this in the comments provided (e.g., in the Target Market test, only applicants that cannot meet the test based on its Financial Products and Financial Services would be required to submit additional information about its Development Services), but the CDFI Fund should consider this approach more broadly as it seeks to streamline its certification review policies.

The CDFI Fund should also consider when designations by other agencies can serve as a proxy for certain aspects of CDFI certification. For example, the National Credit Union Administration has designated over 2200 credit unions as "low income community" credit unions. By virtue of this designation, those credit unions automatically meet 6 of the 7 certification criteria: they are legal entities, they have a primary mission of community or economic development, they are financing entities, they are non-governmental entities and they have boards that are accountable to their communities. .

Similarly, the CDFI Fund should consider identifying other proxies for CDFIs to demonstrate that they are serving low income targeted populations, such as investing in housing properties with affordability restrictions; educational facilities where a majority of students receive free or reduced lunch; and health centers that are Federally Qualified Health Centers.

MAPPING

The Fund requires new candidates for certification, "map" their Target Markets. The mapping is not required either by statute or regulation for certification. It appears to exist so that the Fund can determine the physical service area a CDFI is serving. It is not clear why a narrative could not be used, for example, all low income persons in the state of Michigan, or all qualifying low income census tracts in the Los Angeles MSA. Simplifying the Target Market requirements would reduce the burden of the current mapping system, particularly if the need

³⁶ 12 USC §4702 (5)(a)(v)

for contiguous census tracts were dropped as we recommend. The policy guidance on how to conduct the mapping is given in 3 documents that together comprise 49 pages³⁷.

As stated earlier, the NMTC program's process of becoming a certified Community Development Entity also appears to be simpler; CDE's are asked whether the applicant will serve a local, regional, state or national market.³⁸ This approach could be used by all CDFIs, as even CDFIs that plan to serve a Targeted Population nonetheless are serving borrowers in defined geographic locations.

It is understood that regardless of how the service area is captured at the front end, CDFIs and CDEs must report transactions through the Community Investment Impact System and must geo-code addresses to accurately report the location of borrowers or beneficiaries of their activities.

CERTIFICATION SERVICE MARK

We suggest the CDFI Fund request public comment on the advisability of requiring certified CDFIs to display a Fund-designed service mark on its website or other materials to inform the public that the entity is in fact certified. The mark could include information on how the public could reach the Fund if it has questions about the activities or practices of the organization.

APPENDIX

12 USC § § 401-4707 AND

12 USC § 4701 - FINDINGS AND PURPOSES

Current through Pub. L. 112-238. (See Public Laws for the current Congress.)

(a) Findings

The Congress finds that—

(1) many of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other opportunities;

(2) the restoration and maintenance of the economies of these communities will require coordinated development strategies, intensive supportive services, and increased access to equity investments and loans for development activities, including investment in businesses, housing, commercial real estate, human development, and other activities that promote the long-term economic and social viability of the community; and

³⁷ CDFI Fund website, accessed August 14, 2015, provides links to 3 mapping documents under the heading "Application Materials."

³⁸ New Markets Tax Credit CDE Certification Application (rev August 2014) p. 18

(3) Community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans, and development services.

(b) Purpose

The purpose of this subchapter is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.

12 USC § 4702 - DEFINITIONS

For purposes of this subchapter, the following definitions shall apply:

(1) Administrator

The term “Administrator” means the Administrator of the Fund appointed under section 4703(b) of this title.

(2) Appropriate Federal banking agency

The term “appropriate Federal banking agency” has the same meaning as in section 1813 of this title, and also includes the National Credit Union Administration Board with respect to insured credit unions.

(3) Affiliate

The term “affiliate” has the same meaning as in section 1841(k) of this title.

(4) Board

The term “Board” means the Community Development Advisory Board established under section 4703(d) of this title.

(5) Community development financial institution

(A) In general

The term “community development financial institution” means a person (other than an individual) that—

- (i) has a primary mission of promoting community development;
- (ii) serves an investment area or targeted population;
- (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;
- (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and
- (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.

(B) Conditions for qualification of holding companies

(i) Consolidated treatment. A depository institution holding company may qualify as a community development financial institution only if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements of subparagraph (A).

(ii) Exclusion of subsidiary or affiliate for failure to meet consolidated treatment rule. No subsidiary or affiliate of a depository institution holding company may qualify as a community development financial institution if the holding company and the subsidiaries and affiliates of the holding company do not collectively meet the requirements of subparagraph (A).

(C) Conditions for subsidiaries

No subsidiary of an insured depository institution may qualify as a community development financial institution if the insured depository institution and its subsidiaries do not collectively meet the requirements of subparagraph (A).

(6) Community partner

The term “community partner” means a person (other than an individual) that provides loans, equity investments, or development services, including a depository institution holding company, an insured depository institution, an insured credit union, a nonprofit organization, a State or local government agency, a quasi-governmental entity, and an investment company authorized to operate pursuant to the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.].

(7) Community partnership

The term “community partnership” means an agreement between a community development financial institution and a community partner to provide development services, loans, or equity investments, to an investment area or targeted population.

(8) Depository institution holding company

The term “depository institution holding company” has the same meaning as in section 1813 of this title.

(9) Development services

The term “development services” means activities that promote community development and are integral to lending or investment activities, including—

- (A) Business planning;
- (B) Financial and credit counseling; and
- (C) Marketing and management assistance.

(10) Fund

The term “Fund” means the Community Development Financial Institutions Fund established under section 4703(a) of this title.

(11) Indian reservation

The term “Indian reservation” has the same meaning as in section 1903(10) of title 25, and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

(12) Indian tribe

The term “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 the special programs and services provided by the United States to Indians because of their status as Indians.

(13) Insured community development financial institution

The term “insured community development financial institution” means any community development financial institution that is an insured depository institution or an insured credit union.

(14) Insured credit union

The term “insured credit union” has the same meaning as in section 1752(7) of this title.

(15) Insured depository institution

The term “insured depository institution” has the same meaning as in section 1813 of this title.

(16) Investment area

The term “investment area” means a geographic area (or areas) including an Indian reservation that—

- (A)
 - (i) meets objective criteria of economic distress developed by the Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, rural population outmigration, lag in population growth, and extent of blight and disinvestment; and
 - (ii) has significant unmet needs for loans or equity investments; or
- (B) Encompasses or is located in an empowerment zone or enterprise community designated under section

1391 of title 26.

(17) Low-income

The term “low-income” means having an income, adjusted for family size, of not more than—

- (A) For metropolitan areas, 80 percent of the area median income; and
- (B) For nonmetropolitan areas, the greater of—
 - (i) 80 percent of the area median income; or
 - (ii) 80 percent of the statewide nonmetropolitan area median income.

(18) State

The term “State” has the same meaning as in section 1813 of this title.

(19) Subsidiary

The term “subsidiary” has the same meaning as in section 1813 of this title, except that a community development financial institution that is a corporation shall 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 the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation.

(20) Targeted population

The term “targeted population” means individuals, or an identifiable group of individuals, including an Indian tribe, who—

(A) Are low-income persons; or

(B) Otherwise lack adequate access to loans or equity investments.

(21) Training program

The term “training program” means the training program operated by the Fund under section 4708 of this title.

12 USC § 4703 - ESTABLISHMENT OF NATIONAL FUND FOR COMMUNITY DEVELOPMENT BANKING

(a) Establishment

(1) In general

There is established a corporation to be known as the Community Development Financial Institutions Fund that shall have the duties and responsibilities specified by this subchapter and subchapter II of this chapter. The Fund shall have succession until dissolved. The offices of the Fund shall be in Washington, D.C. The Fund shall not be affiliated with or be within any other agency or department of the Federal Government.

(2) Wholly owned Government Corporation

The Fund shall be a wholly owned Government corporation in the executive branch and shall be treated in all respects as an agency of the United States, except as otherwise provided in this subchapter.

(b) Management of Fund

(1) Appointment of Administrator

The management of the Fund shall be vested in an Administrator, who shall be appointed by the President. The Administrator shall not engage in any other business or employment during service as the Administrator.

(2) Chief financial officer

The Administrator shall appoint a chief financial officer, who shall have the authority and functions of an agency Chief Financial Officer under section 902 of title 31. In the event of a vacancy in the position of the Administrator or during the absence or disability of the Administrator, the chief financial officer shall perform the duties of the position of Administrator.

(3) Other officers and employees

The Administrator may appoint such other officers and employees of the Fund as the Administrator determines to be necessary or appropriate.

(4) Expedited hiring

During the 2-year period beginning on September 23, 1994, the Administrator may—

(A) Appoint and terminate the individuals referred to in paragraphs (2) and (3) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (3) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(c) General Powers

In carrying out the functions of the Fund, the Administrator—

(1) shall have all necessary and proper authority to carry out this subchapter and subchapter II of this chapter;

(2) shall have the power to adopt, alter, and use a corporate seal for the Fund, which shall be judicially noticed;

(3) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which business of the Fund may be conducted and such rules and regulations as may be necessary or appropriate to implement this subchapter and subchapter II of this chapter;

(4) may enter into, perform, and enforce such agreements, contracts, and transactions as may be deemed necessary or appropriate to the conduct of activities authorized under this subchapter and subchapter II of this chapter;

(5) may determine the character of and necessity for expenditures of the Fund and the manner in which they shall be incurred, allowed, and paid;

(6) may utilize or employ the services of personnel of any agency or instrumentality of the United States with the consent of the agency or instrumentality concerned on a reimbursable or nonreimbursable basis; and

(7) may execute all instruments necessary or appropriate in the exercise of any of the functions of the Fund under this subchapter and subchapter II of this chapter and may delegate to the officers of the Fund such of the powers and responsibilities of the Administrator as the Administrator deems necessary or appropriate for the administration of the Fund.

(d) Advisory Board

(1) Establishment

There is established an advisory board to the Fund to be known as the Community Development Advisory Board, which shall be operated in accordance with the provisions of the Federal Advisory Committee Act, except that section 14 of that Act does not apply to the Board.

(2) Membership

The Board shall consist of 15 members, including—

(A) The Secretary of Agriculture or his or her designee;

(B) The Secretary of Commerce or his or her designee;

(C) The Secretary of Housing and Urban Development or his or her designee;

(D) The Secretary of the Interior or his or her designee;

(E) The Secretary of the Treasury or his or her designee;

(F) The Administrator of the Small Business Administration or his or her designee; and

(G) 9 private citizens, appointed by the President, who shall be selected, to the maximum extent practicable, to provide for national geographic representation and racial, ethnic, and gender diversity, including—

(i) 2 individuals who are officers of existing community development financial institutions;

(ii) 2 individuals who are officers of insured depository institutions;

(iii) 2 individuals who are officers of national consumer or public interest organizations;

(iv) 2 individuals who have expertise in community development; and

(v) 1 individual who has personal experience and specialized expertise in the unique lending and community development issues confronted by Indian tribes on Indian reservations.

(3) Chairperson

The members of the Board specified in paragraph (2) (G) shall select, by majority vote, a chairperson of the Board, who shall serve for a term of 2 years.

(4) Board function

It shall be the function of the Board to advise the Administrator on the policies of the Fund regarding activities under this subchapter. The Board shall not advise the Administrator on the granting or denial of any particular application.

(5) Terms of private members

(A) In general

Each member of the Board appointed under paragraph (2)(G) shall serve for a term of 4 years.

(B) Vacancies

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the previous member was appointed shall be appointed for the remainder of such term. Members may continue to serve following the expiration of their terms until a successor is appointed.

(6) Meetings

The Board shall meet at least annually and at such other times as requested by the Administrator or the chairperson. A majority of the members of the Board shall constitute a quorum.

(7) Reimbursement for expenses

The members of the Board may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with the Federal Advisory Committee Act.

(8) Costs and expenses

The Fund shall provide to the Board all necessary staff and facilities.

(e) Omitted

(f) Government Corporation Control Act exemption

Section 9107(b) of title 31, shall not apply to deposits of the Fund made pursuant to section 4707 of this title.

(g) Limitation of Fund and Federal liability

The liability of the Fund and the United States Government arising out of any investment in a community development financial institution in accordance with this subchapter shall be limited to the amount of the investment. 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, Territory, or the District of Columbia. Nothing in this subsection shall affect the application of any Federal tax law.

(h) Prohibition on issuance of securities

The Fund may not issue stock, bonds, debentures, notes, or other securities.

(i) Omitted

(j) Assisted institutions not United States instrumentalities

A community development financial institution or other organization that receives assistance pursuant to this subchapter shall not be deemed to be an agency, department, or instrumentality of the United States.

(k) Transition period

(1) In general

During the transition period, the Secretary of the Treasury may—

- (A) Assist in the establishment of the administrative functions of the Fund listed in paragraph (2); and
- (B) Hire not more than 6 individuals to serve as employees of the Fund during the transition period.

(2) Continued service

Individuals hired in accordance with paragraph (1) (B) may continue to serve as employees of the Fund after the transition period.

(3) Administrative functions

The administrative functions referred to in paragraph (1) (A) shall be limited to—

- (A) Establishing accounting, information, and recordkeeping systems for the Fund; and
- (B) Procuring office space, equipment, and supplies.

(4) Expedited hiring

During the transition period, the Secretary of the Treasury may—

- (A) Appoint and terminate the individuals referred to in paragraph (1) (B) without regard to the civil service laws and regulations; and
- (B) fix the compensation of the individuals referred to in paragraph (1)(B) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(5) Certain employees

During the transition period, employees of the Department of the Treasury may only comprise less than one-half of the total number of individuals hired in accordance with paragraph (1) (B).

(6) Transition expenses

Amounts previously appropriated to the Department of the Treasury may be used to pay obligations and expenses of the Fund incurred under this section, and such amounts may be reimbursed by the Fund to the Department of the Treasury from amounts appropriated to the Fund for fiscal year 1995.

(7) “Transition period” defined

For purposes of this subsection, the term “transition period” means the period beginning on September 23, 1994, and ending on the date on which the Administrator is appointed.

12 USC § 4704 - APPLICATIONS FOR ASSISTANCE

Current through Pub. L. 112-238. (See Public Laws for the current Congress.)

(a) Form and procedures

An application for assistance under this subchapter shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

(b) Minimum requirements

Except as provided in sections 4705 and 4712 of this title, the Fund shall require an application—

(1) to establish that the applicant is, or will be, a community development financial institution;

(2) to include a comprehensive strategic plan for the organization that contains—

(A) a business plan of not less than 5 years in duration that demonstrates that the applicant will be properly managed and will have the capacity to operate as a community development financial institution that will not be dependent upon assistance from the Fund for continued viability;

(B) an analysis of the needs of the investment area or targeted population and a strategy for how the applicant will attempt to meet those needs;

(C) a plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs, and private sector financial services;

(D) an explanation of how the proposed activities of the applicant are consistent with existing economic, community, and housing development plans adopted by or applicable to an investment area or targeted population; and

(E) a description of how the applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to investment areas or targeted populations;

(3) to include a detailed description of the applicant's plans and likely sources of funds to match the amount of assistance requested from the Fund;

(4) in the case of an applicant that has previously received assistance under this subchapter, to demonstrate that the applicant—

(A) has substantially met its performance goals and otherwise carried out its responsibilities under this subchapter and the assistance agreement; and

(B) will expand its operations into a new investment area or serve a new targeted population, offer more products or services, or increase the volume of its business;

(5) in the case of an applicant with a prior history of serving investment areas or targeted populations, to demonstrate that the applicant—

(A) has a record of success in serving investment areas or targeted populations; and

(B) will expand its operations into a new investment area or to serve a new targeted population, offer more products or services, or increase the volume of its current business; and

(6) to include such other information as the Fund deems appropriate.

(c) Preapplication outreach program

The Fund shall provide an outreach program to identify and provide information to potential applicants and may provide technical assistance to potential applicants, but shall not assist in the preparation of any application.

12 USC § 4705 - COMMUNITY PARTNERSHIPS

Current through Pub. L. 112-238. (See Public Laws for the current Congress.)

(a) Application

An application for assistance may be filed jointly by a community development financial institution and a community partner to carry out a community partnership.

(b) Application requirements

The Fund shall require a community partnership application—

(1) to meet the minimum requirements established for community development financial institutions under section 4704(b) of this title, except that the criteria specified in paragraphs (1) and (2)(A) of section 4704(b) of this title shall not apply to the community partner;

(2) to describe how each coapplicant will participate in carrying out the community partnership and how the partnership will enhance activities serving the investment area or targeted population; and

(3) to demonstrate that the community partnership activities are consistent with the strategic plan submitted by the community development financial institution coapplicant.

(c) Selection criteria

The Fund shall consider a community partnership application based on—

(1) the community development financial institution coapplicant—

(A) meeting the minimum selection criteria described in section 4704 of this title; and

(B) satisfying the selection criteria of section 4706 of this title;

(2) the extent to which the community partner coapplicant will participate in carrying out the partnership;

(3) the extent to which the community partnership will enhance the likelihood of success of the community development financial institution coapplicant's strategic plan; and

(4) the extent to which service to the investment area or targeted population will be better performed by a partnership as opposed to the individual community development financial institution coapplicant.

(d) Limitation on distribution of assistance

Assistance provided upon approval of an application under this section shall be distributed only to the community development financial institution coapplicant, and shall not be used to fund any activities carried out directly by the community partner or an affiliate or subsidiary thereof.

(e) Other requirements and limitations

All other requirements and limitations imposed by this subchapter on a community development financial institution assisted under this subchapter shall apply (in the manner that the Fund determines to be appropriate) to assistance provided to carry out community partnerships. The Fund may establish additional guidelines and restrictions on the use of Federal funds to carry out community partnerships.

12 USC § 4706 - SELECTION OF INSTITUTIONS

Current through Pub. L. 112-238. (See Public Laws for the current Congress.)

(a) Selection criteria

Except as provided in section 4712 of this title, the Fund shall, in its sole discretion, select community development financial institution applicants meeting the requirements of section 4704 of this title for assistance based on—

(1) the likelihood of success of the applicant in meeting the goals of its comprehensive strategic plan;

(2) the experience and background of the management team;

(3) the extent of need for equity investments, loans, and development services within the investment areas or targeted populations;

(4) the extent of economic distress within the investment areas or the extent of need within the targeted populations, as those factors are measured by objective criteria;

(5) the extent to which the applicant will concentrate its activities on serving its investment areas or targeted populations;

(6) 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 match;

(7) the extent to which the matching funds are derived from private sources;

(8) the extent to which the proposed activities will expand economic opportunities within the investment areas or the targeted populations;

(9) whether the applicant is, or will become, an insured community development financial institution;

(10) the extent of support from the investment areas or targeted populations;

(11) the extent to which the applicant is, or will be, community-owned or community-governed;

(12) the extent to which the applicant will increase its resources through coordination with other institutions or participation in a secondary market;

(13) in the case of an applicant with a prior history of serving investment areas or targeted populations, the extent of success in serving them; and

(14) other factors deemed to be appropriate by the Fund.

(b) Geographic diversity

In selecting applicants for assistance, the Fund shall seek to fund a geographically diverse group of applicants, which shall include applicants from metropolitan, nonmetropolitan, and rural areas.

12 USC § 4707 - ASSISTANCE PROVIDED BY FUND

Current through Pub. L. 112-238. (See Public Laws for the current Congress.)

(a) Forms of assistance

(1) In general

The Fund may provide—

(A) financial assistance through equity investments, deposits, credit union shares, loans, and grants; and

(B) technical assistance—

(i) directly;

(ii) through grants; or

(iii) by contracting with organizations that possess expertise in community development finance, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(2) Equity investments

(A) Limitation on equity investments

The Fund shall not own more than 50 percent of the equity of a community development financial institution and may not control the operations of such institution. The Fund may hold only transferable, nonvoting equity investments in the institution. Such equity investments may provide for convertibility to voting stock upon transfer by the Fund.

(B) Fund deemed not to control

Notwithstanding any other provision of law, the Fund shall not be deemed to control a community development financial institution by reason of any assistance provided under this subchapter for the purpose of any other applicable law to the extent that the Fund complies with subparagraph (A). Nothing in this subparagraph shall affect the application of any Federal tax law.

(3) Deposits

Deposits made pursuant to this section in an insured community development financial institution shall not be subject to any requirement for collateral or security.

(4) Limitations on obligations

Direct loan obligations may be incurred by the Fund only to the extent that appropriations of budget authority to cover their cost, as defined in section 661a(5) of title 2, are made in advance.

(b) Uses of financial assistance

(1) In general

Financial assistance made available under this subchapter may be used by assisted community development financial institutions to serve investment areas or targeted populations by developing or supporting—

(A) commercial facilities that promote revitalization, community stability, or job creation or retention;

(B) businesses that—

(i) provide jobs for low-income people or are owned by low-income people; or

(ii) enhance the availability of products and services to low-income people;

(C) community facilities;

(D) the provision of basic financial services;

(E) housing that is principally affordable to low-income people, except that assistance used to facilitate homeownership shall only be used for services and lending products—

- (i) that serve low-income people; and
- (ii) that—
 - (I) are not provided by other lenders in the area; or
 - (II) complement the services and lending products provided by other lenders that serve the investment area or targeted population; and
- (F) other businesses and activities deemed appropriate by the Fund.

(2) Limitations

No assistance made available under this subchapter may be expended by a community development financial institution (or an organization receiving assistance under section 4712 of this title) to pay any person to influence or attempt to influence any agency, elected official, officer, or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement (as such terms are defined in section 1352 of title 31).

(c) Uses of technical assistance

(1) Types of activities

Technical assistance may be used for activities that enhance the capacity of a community development financial institution, such as training of management and other personnel and development of programs and investment or loan products.

(2) Availability of technical assistance

The Fund may provide technical assistance, regardless of whether or not the recipient also receives financial assistance under this section.

(d) Amount of assistance

(1) In general

Except as provided in paragraph (2), the Fund may provide not more than \$5,000,000 of assistance, in the aggregate, during any 3-year period to any 1 community development financial institution and its subsidiaries and affiliates.

(2) Exception

The Fund may provide not more than \$3,750,000 of assistance in addition to the amount specified in paragraph (1) during the same 3-year period to an existing community development financial institution that proposes to establish a subsidiary or affiliate for the purpose of serving an investment area or targeted population outside of any State and outside of any metropolitan area presently served by the institution, if—

(A) the subsidiary or affiliate—

(I) would be a community development financial institution; and

(ii) independently—

(I) meets the selection criteria described in section 4704 of this title; and

(II) satisfies the selection criteria of section 4706 of this title; and

(B) no other application for assistance to serve the investment area or targeted population has been submitted to the Administrator within a reasonable period of time preceding the date of receipt of the application at issue.

(3) Timing of assistance

Assistance may be provided as described in paragraphs (1) and (2) in a lump sum or over a period of time, as determined by the Fund.

(e) Matching requirements

(1) In general

Assistance other than technical assistance shall be matched with funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. The Fund shall provide no assistance (other than technical assistance) until a community development financial institution has secured firm commitments for the matching funds required.

(2) Exception

In the case of an applicant with severe constraints on available sources of matching funds, the Fund may permit an applicant to comply with the matching requirements of paragraph (1) by—

(A) reducing such matching requirement by 50 percent; or

(B) permitting an applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such applicant—

- (i) has total assets of less than \$100,000;
- (ii) serves nonmetropolitan or rural areas; and
- (iii) is not requesting more than \$25,000 in assistance.

(3) Limitation

Not more than 25 percent of the total funds disbursed in any fiscal year by the Fund may be matched as authorized under paragraph (2).

(4) Construction of “Federal Government funds”

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

(f) Terms and conditions

(1) Soundness of unregulated institutions

The Fund shall—

(A) Ensure, to the maximum extent practicable, that each community development financial institution (other than an insured community development financial institution or depository institution holding company) assisted under this subchapter is financially and managerially sound and maintains appropriate internal controls;

(B) Require such institution to submit, not less than once during each 18-month period, a statement of financial condition audited by an independent certified public accountant as part of the report required by section 4714(e)(1) of this title; and

(C) Require that all assistance granted under this section is used by the community development financial institution or community development partnership in a manner consistent with the purposes of this subchapter.

(2) Assistance agreement

(A) In general

Before providing any assistance under this subchapter, the Fund and each community development financial institution to be assisted shall enter into an agreement that requires the institution to comply with performance goals and abide by other terms and conditions pertinent to assistance received under this subchapter.

(B) Performance goals

Performance goals shall be negotiated between the Fund and each community development financial institution receiving assistance based upon the strategic plan submitted pursuant to section 4704(b)(2) of this title. Such goals may be modified with the consent of the parties, or as provided in subparagraph (C). Performance goals for insured community development financial institutions shall be determined in consultation with the appropriate Federal banking agency.

(C) Sanctions

The agreement shall provide that, in the event of fraud, mismanagement, noncompliance with this subchapter, or noncompliance with the terms of the agreement, the Fund, in its discretion, may—

- (i) require changes to the performance goals imposed pursuant to subparagraph (B);
- (ii) require changes to the strategic plan submitted pursuant to section 4704(b)(2) of this title;
- (iii) revoke approval of the application;
- (iv) reduce or terminate assistance;
- (v) require repayment of assistance;
- (vi) bar an applicant from reapplying for assistance from the Fund; and
- (vii) take such other actions as the Fund deems appropriate.

(D) Consultation with tribal governments

In reviewing the performance of any assisted community development financial institution, the investment area of which includes an Indian reservation, or the targeted population of which includes an Indian tribe, the Fund shall consult with, and seek input from, any appropriate tribal government.

(g) Authority to sell equity investments and loans

The Fund may, at any time, sell its equity investments and loans, but the Fund shall retain the power to enforce limitations on assistance entered into in accordance with the requirements of this subchapter until the performance goals related to the investment or loan have been met.

(h) No authority to limit supervision and regulation

Nothing in this subchapter shall affect any authority of the appropriate Federal banking agency to supervise and regulate any institution or company.

12 USC § 4714 - RECORDKEEPING

(a) In general

A community development financial institution receiving assistance from the Fund shall keep such records, for such periods as may be prescribed by the Fund and necessary to disclose the manner in which any assistance under this subchapter is used and to demonstrate compliance with the requirements of this subchapter.

(b) User profile information

The Fund shall require each community development financial institution or other organization receiving assistance from the Fund to compile such data, as is determined to be appropriate by the Fund, on the gender, race, ethnicity, national origin, or other pertinent information concerning individuals that utilize the services of the assisted institution to ensure that targeted populations and low-income residents of investment areas are adequately served.

(c) Access to records

The Fund shall have access on demand, for the purpose of determining compliance with this subchapter, to any records of a community development financial institution or other organization that receives assistance from the Fund.

(d) Review

Not less than annually, the Fund shall review the progress of each assisted community development financial institution in carrying out its strategic plan, meeting its performance goals, and satisfying the terms and conditions of its assistance agreement.

(e) Reporting

(1) Annual reports

The Fund shall require each community development financial institution receiving assistance under this subchapter to submit an annual report to the Fund on its activities, its financial condition, and its success in meeting performance goals, in satisfying the terms and conditions of its assistance agreement, and in complying with other requirements of this subchapter, in such form and manner as the Fund shall specify.

(2) Availability of reports

The Fund, after deleting or redacting any material as appropriate to protect privacy or proprietary interests, shall make such reports submitted under paragraph (1) available for public inspection.

CDFI Fund Regulations – 12 CFR §§ 1801.100-1801.302

Source: 70 FR 73888, Dec. 13, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 1805.100 Purpose.

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

§ 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 merit-based qualitative application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.*

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

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

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period prior to the date the Fund selected the CDFI to receive a Bank Enterprise Award (meaning, the date of the Fund's BEA Program notice of award); or

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

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

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

§ 1805.103 Awardee not instrumentality.

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

§ 1805.104 Definitions.

For the purpose of this part:

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

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

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

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

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

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

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

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

(i) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in §1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

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

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

(l) *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;

(m) *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;

(n) *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 State-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.);

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

(p) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described in an applicable Notice of Funds Availability (NOTICE OF FUNDS AVAILABILITY);

(q) *Control* means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons; (2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or (3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

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

(s) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products or Financial Services of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

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

(u) *Financial Products* means: Loans, Equity Investments and similar financing activities (as determined by the Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in Insured Credit Union CDFIs, emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs.

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

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

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

(y) *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;

(z) *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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Nonvoting shares*. Preferred shares, limited partnership shares or interests, or similar interests are not Voting Securities if:

- (i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes

of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

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

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

§ 1805.105 Waiver authority.

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

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control numbers 1559–0006, 1559–0021 and 1559–0022.

Subpart B—Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.*

(1) An entity that meets the requirements described in §1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(4) of this section, will be eligible to apply for assistance under this part.

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

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

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

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

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

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

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.*

(1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

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

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

§ 1805.201 Certification as a Community Development Financial Institution.

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, §1805.200(b) or (a)(4) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) of this section and §1805.200 by providing the information described in the application for certification demonstrating that the Applicant meets the eligibility requirements described in paragraphs (b)(1) through (b)(6) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and §1805.200.

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

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

- (i) Depository Institution Holding Company;
- (ii) Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union; or
- (iii) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(3) *Target Market.*

(i) *General.* An Applicant may be found to serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

(ii) *Investment Area.*

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

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

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

Equity Investments, or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents.

(iii) *Targeted Population.*

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

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products.

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

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

Subpart C—Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

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

§ 1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

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

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

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

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

(c) Community Facilities;

(d) The provision of Financial Services;

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

- (1) Are not provided by other lenders in the area; or
- (2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);
- (f) The provision of consumer loans (a loan to one or more individuals for household, family, or other personal expenditures); or
- (g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.302 Restrictions on use of assistance.

- (a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the Fund and described in the Assistance Agreement.
- (b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.
- (c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.