

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 Popu-

lation(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).

(mm)(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)(3) of this section, will be eligible to apply for assistance under this part.

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

(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. 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.

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

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

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

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

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

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

**§ 1805.201 Certification as a Community Development Financial Institution.**

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in 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