

Summary

Section 1805.101 of the current rule provides that the Fund will select Awardees to receive financial and technical assistance through a competitive application process. The Fund is considering evaluating applications, particularly those for technical assistance, through a merit-based qualitative application process in which the Fund may evaluate applications on a stand-alone basis in lieu of a larger competitive process in order to expedite funding decisions. Accordingly, § 1805.101 of this interim rule provides that the Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. This interim rule contains similar conforming changes to §§ 1805.303(d) and 1805.700(a).

Definitions

Section 1805.104 of the current rule contains a list of definitions. This interim rule revises § 1805.104 by adding definitions of the following two terms: "Control" and "Voting Securities." The two new definitions are intended to clarify the meaning of the term "Affiliate," which is defined in § 1805.104(b) of the current rule. Section 1805.104(b) of the current rule defines "Affiliate" as any company or entity that controls, is controlled by, or is under common control with another company. The definition of "Affiliate" is derived from Section 103 of the Act (12 U.S.C. 4702(3)), which incorporates the definition of "Affiliate" contained in the Bank Holding Company Act (BHCA) (12 U.S.C. 1841(k)). Because the definition of "Affiliate" is derived from the BHCA, the Fund's definition of "Control" in this interim rule is likewise derived from the BHCA (12 U.S.C. 1841(a)(2)) and the BHCA implementing regulations (12 CFR 225.2(e)(1)). The definition of "Voting Securities," which is referenced in the definition of "Control," is derived from the definition contained in the BHCA implementing regulations (12 CFR 225.2(g)). The addition of these two definitions in this interim rule does not reflect a change in Fund policy or procedure, because the Fund has consistently looked to such BHCA definitions to guide it in determining whether one company is an Affiliate of another company.

Applicant Eligibility

Section 1805.200(a)(2) of the current rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if its application

materials provide a realistic course of action to ensure that it will meet the CDFI eligibility tests within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The current interim rule reflects the Fund's practice of allowing entities to apply for certification and funding at the same time. The Fund intends to change such practice by requiring the submission of an application for certification in advance of the submission of an application for funding for some CDFI Program components. The policy goal of this bifurcated process is to facilitate the allocation of Fund staff resources for purposes of making eligibility and award decisions on a timelier basis. In furtherance of this same policy goal, the Fund also seeks the ability to require an entity to be certified as a CDFI prior to such entity's submission of an application for funding under some CDFI Program components. Accordingly, § 1805.200(a)(2) of this interim rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund receives an application for certification from the entity within the time period set forth in an applicable NOFA, and the Fund determines that such application materials provide a realistic course of action to ensure that it will meet the CDFI eligibility tests within the period set forth in an applicable NOFA. Section 1805.200(a)(2) of this interim rule also provides that the Fund reserves the right to require an entity to have been certified as a CDFI prior to its submission of an application for assistance under the CDFI Program, as set forth in an applicable NOFA.

Primary Mission Eligibility Test

Section 1805.201(b)(1) of the current rule provides that in order for an entity to qualify as a CDFI, such entity shall have a primary mission of promoting community development. Section 1805.201(b)(1) of the current rule also provides that in determining whether an entity has such a primary mission, the Fund will consider whether the activities of such entity individually and such entity and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of distressed communities. The Fund believes that the primary mission eligibility test in the current rule does not comply with the plain meaning of the definition of "CDFI" contained in Section 103 of the Act. Section 103 of

the Act (12 U.S.C. 4702(5)(A)(i)) provides, in pertinent part, that the term "CDFI" means a person (other than an individual) that has a primary mission of promoting community development. The Fund believes that if Congress had intended that the primary mission eligibility test to apply to an entity on a collective basis with the entity's Affiliates, Congress would have so specified as it did elsewhere in Section 103 of the Act (12 U.S.C. 4702(5)(B) and (C)) with regard to entities that are Depository Institution Holding Companies, Subsidiaries or Affiliates of Depository Institution Holding Companies, and Subsidiaries of Insured Depository Institutions. Moreover, the Fund believes that this interim rule reflects a sound policy approach in that it will facilitate the ability of venture capital companies to qualify as CDFIs. Under the current rule, venture capital companies, which might meet all of the other CDFI eligibility tests, might not meet the primary mission eligibility test if their Affiliate portfolio companies do not have a primary mission of promoting community development. Accordingly, under § 1805.201(b)(1) of this interim rule, in determining whether an entity has a primary mission of promoting community development, the Fund will only consider the activities of the entity individually, and no longer take into account, except where required by the Act, the activities of an entity's Affiliates.

Certification As A CDFI

Section 1805.201 of the current rule describes, among other things, the application content requirements for an entity to be certified by the Fund as a CDFI. This interim rule deletes such application content requirements for purposes of regulatory economy and efficiency, because they are already contained in and will continue to be contained in the certification application.

Target Market—Investment Area

Section 1805.201(b)(3)(ii)(A)(3) of the current rule provides that a geographic area will be considered an eligible Investment Area if it encompasses or is located in an Empowerment Zone or Enterprise Community designated under Section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391). The Fund has decided to clarify this Investment Area eligibility requirement for purposes of accurately reflecting the Fund's longstanding interpretation of such requirement. Accordingly, § 1805.201(b)(3)(ii)(A)(3) of this interim rule clarifies that a geographic area will be considered an eligible Investment