

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 number 1559-0006.

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 NOFA; 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 NOFA. 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 NOFA.

(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 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)(3) (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 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 or 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 Trust Territories of the Pacific Islands, 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