

**§ 1805.803**

**12 CFR Ch. XVIII (1-1-04 Edition)**

based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Such performance goals may include measures that require an Awardee to:

- (1) Be financially sound;
- (2) Be managerially sound;
- (3) Maintain appropriate internal controls; and/or
- (4) Achieve specific lending, investment, and development service objectives. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

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

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

(d) In the case of an Insured CDFI, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

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

- (1) Objects to the proposed sanction;
- (2) Determines that the sanction would:
  - (i) Have a material adverse effect on the safety and soundness of the institution; or
  - (ii) Impede or interfere with an enforcement action against that institution by that agency;
- (3) Proposes a comparable alternative action; and
- (4) Specifically explains:
  - (i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and
  - (ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.
- (f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

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

**§ 1805.803 Disbursement of funds.**

Assistance provided pursuant to this part may be provided in a lump sum or

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

**§ 1805.804 Data collection and reporting.**

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

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

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

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the

impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

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

(e) *Review.* (1) General. At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. The Fund's review will generally be based on the following:

- (i) The annual report described in paragraph (e)(2) of this section;
- (ii) The audited statements of financial condition described in paragraph (e)(3) of this section; and
- (iii) The annual survey described in paragraph (e)(4) of this section.

(2) *Annual Report.* An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

- (i) A description of an Awardee's activities in support of its Comprehensive Business Plan;
- (ii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals; and
- (iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used;

(iv) A certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and