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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

Modification of Financial Reporting Requirements for Non-Profit Organizations

AGENCY: Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury.

ACTION: Interim rule.

SUMMARY: The mission of the Community Development Financial Institutions Fund (CDFI Fund) is to increase economic opportunity and promote community development investments for underserved populations in distressed communities in the United States. Its long-term vision is to economically empower America's underserved and distressed communities. The purpose of the Community Development Financial Institutions Program (CDFI Program) is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the CDFI Fund provides financial assistance in the form of grants, loans, equity investments and deposits to CDFIs selected through a merit-based application process. The CDFI Fund provides financial assistance to CDFIs to enhance their ability to make loans and investments, and to provide related services for the benefit of designated investment areas, targeted populations, or both. In addition, through the CDFI Program, the CDFI Fund provides technical assistance grants to CDFIs and entities that propose to become CDFIs, for the purpose of increasing their capacity to serve their target markets.

The CDFI Fund is amending its regulations regarding the financial reporting requirements for non-profit organizations. The regulatory change requires CDFI Program awardees that are non-profit organizations to provide audited financial statements within 180 days after the end of the awardee's fiscal year end. This regulatory action conforms to the financial reporting requirements for non-profit awardees to the statutory provisions governing the CDFI Program.

**DATES:** Effective date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comment due date: [INSERT DATE THAT IS 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** All comments concerning this interim rule should be addressed to the CDFI Program Manager, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington DC 20220; by email to; by email to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov); or by facsimile at (202) 453-2466.

Electronic Submission of Comments: Interested persons are encouraged to submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

All properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit

any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Adam Martinez, Program Manager, CDFI Program, by mail to the CDFI Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington DC 20220; by email to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov); or by facsimile at (202) 453-2466 (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The CDFI Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*) (the Act). Subsequent legislation placed the CDFI Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the CDFI Fund as set forth in the Act.

The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

The CDFI Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to CDFIs, which specialize in serving underserved markets and the people who live there. CDFIs -- while highly effective -- are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Through the CDFI Program, the CDFI Fund

provides CDFIs with financial assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Additionally, many CDFIs are in formation or in the early stages of development in many markets underserved by traditional financial institutions, including rural and Native American communities. The CDFI Program assists such entities – as well as established CDFIs – by providing grants through which they may acquire technical assistance to build their capacity to serve their target markets. Applicants participate in the CDFI Program through a merit-based qualitative application and selection process in which the CDFI Fund makes funding decisions based on pre-established evaluation criteria. An entity generally receives financial assistance monies from the CDFI Fund only after being certified as a CDFI and entering into an assistance agreement with the CDFI Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

On December 13, 2005, the CDFI Fund published in the Federal Register a revised interim rule (70 FR 73887) implementing the CDFI Program (the current rule).

### ***Current Financial Reporting Requirements for Non-Profit Organizations***

Part 1805 of the CDFI Fund regulations (12 CFR part 1805) sets forth the requirements under the Act for Data Collection and Reporting by CDFI Program awardees. Section 1805.804(e)(1) (12 CFR 1805.804(e)(1)) states that all non-profit organizations must submit to the CDFI Fund financial statements that have been reviewed by an independent certified public accountant in accordance with standards issued by the American Institute of Certified Public Accountants, no later than 180 days after the end of the Awardee's fiscal year; and that audited financial statements can be provided by the due date in lieu of reviewed statements, if available.

### Statutory Financial Reporting Requirements for CDFI Program Awardees.

The Act requires the CDFI Fund to ensure that each CDFI Program awardee (other than an insured CDFI or depository institution holding company) 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 awardee's annual report to the CDFI Fund required by section 4714(e)(1) of the Act.

### Conforming CDFI Program Regulations to the Act

The CDFI Program Regulations currently permit non-profit CDFI awardees to submit financial statements that are reviewed but not audited by independent certified public accounts as part of their annual report to the CDFI Fund. This was done in part out of a recognition of the cost and time constraints non-profit awardees face in obtaining audited financial statements within the allotted 180-day period following the end of their fiscal year. The CDFI Fund is issuing this interim rule to conform the regulatory reporting requirements to the requirements of the Act.

### **Regulatory Analysis and Notices**

#### Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C 553) or any other law, the Regulatory Flexibility Act does not apply.

#### Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Numbers 1559–0006, 1559–0021, and 1559–0022. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

#### National Environmental Policy Act

This interim rule has been reviewed in accordance with 12 CFR part 1815. The CDFI Fund’s Environmental Regulations under the National Environmental Protection Act of 1969 (NEPA) require that the CDFI Fund adequately consider the cumulative impact proposed activities have upon the human environment. It is the determination of the CDFI Fund that the interim rule does not constitute a major federal action significantly affecting the quality of the human environment and, in accordance with the NEPA and the CDFI Fund Environmental Quality Regulations, 12 CFR part 1815, neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### Administrative Procedure Act

Because this interim rule relates to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act, 5 U.S.C. 553(a)(2).

#### Catalogue of Federal Domestic Assistance Number

Community Development Financial Institutions Program – 21.020.

#### **List of Subjects in 12 CFR Part 1805**

Community development, Grant programs-housing and community development,

Loan programs-housing and community development, Reporting and recordkeeping requirements, Small businesses

**Amendment to the Regulations**

For the reasons discussed in the preamble, the CDFI Fund is amending 12 CFR part 1805 as follows:

**PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM**

1. The authority citation for part 1805 continues to read as follows:

**Authority:** 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

2. In § 1805.804, paragraph (e)(1)(i) is revised to read as follows:

**§ 1805.804 Data collection and reporting.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) All non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements that have been audited by an independent certified public accountant in accordance with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants, no later than 180 days after the end of the Awardee’s fiscal year. Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are required to have their financial statements audited pursuant to OMB Circular A-133 *Audits of States, Local Governments and Non-Profit Organizations*, must also submit their A-133 audited financial statements to the CDFI Fund no

later than 270 days after the end of the Awardee's fiscal year. Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, must submit to the CDFI Fund a statement signed by the Awardee's Authorized Representative or certified public accountant, asserting that the Awardee is not required to have a single audit pursuant OMB Circular A-133.

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Dated: October 24, 2013

Donna J. Gambrell

Director, Community Development Financial Institutions Fund

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