Community Development Banking and Financial Institutions Act

UNITED STATES CODE
TITLE 12. BANKS AND BANKING
CHAPTER 47. COMMUNITY DEVELOPMENT BANKING
SUBCHAPTER I. COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS
12 USC § 4701 Findings and purposes

Reference

(a) Findings. The Congress finds that --

(1) many of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other opportunities;

(2) the restoration and maintenance of the economies of these communities will require coordinated development strategies, intensive supportive services, and increased access to equity investments and loans for development activities, including investment in businesses, housing, commercial real estate, human development, and other activities that promote the long-term economic and social viability of the community; and

(3) community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans, and development services.

(b) Purpose. The purpose of this subchapter is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.
12 USC § 4702 Definitions

Reference

For purposes of this subchapter, the following definitions shall apply:

(1) Administrator. The term "Administrator" means the Administrator of the Fund appointed under section 4703 (b) of this title.

(2) Appropriate Federal banking agency. The term "appropriate Federal banking agency" has the same meaning as in section 1813 of this title, and also includes the National Credit Union Administration Board with respect to insured credit unions.

(3) Affiliate. The term "affiliate" has the same meaning as in section 1841 (k) of this title.

(4) Board. The term "Board" means the Community Development Advisory Board established under section 4703 (d) of this title.

(5) Community development financial institution.

(A) In general. The term "community development financial institution" means a person (other than an individual) that --

(i) has a primary mission of promoting community development;

(ii) serves an investment area or targeted population;

(iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;

(iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and

(v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.

(B) Conditions for qualification of holding companies.

(i) Consolidated treatment. A depository institution holding company may qualify as a community development financial institution only if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements of subparagraph (A).

(ii) Exclusion of subsidiary or affiliate for failure to meet consolidated treatment rule. No subsidiary or affiliate of a depository institution holding company may qualify as a community development financial institution if the holding company and the subsidiaries and affiliates of the holding company do not collectively meet the requirements of subparagraph (A).

(C) Conditions for subsidiaries. No subsidiary of an insured depository institution may qualify as a community development financial institution if the insured depository institution and its subsidiaries do not collectively meet the requirements of subparagraph (A).
(6) Community partner. The term "community partner" means a person (other than an individual) that provides loans, equity investments, or development services, including a depository institution holding company, an insured depository institution, an insured credit union, a nonprofit organization, a State or local government agency, a quasi-governmental entity, and an investment company authorized to operate pursuant to the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.].

(7) Community partnership. The term "community partnership" means an agreement between a community development financial institution and a community partner to provide development services, loans, or equity investments, to an investment area or targeted population.

(8) Depository institution holding company. The term "depository institution holding company" has the same meaning as in section 1813 of this title.

(9) Development services. The term "development services" means activities that promote community development and are integral to lending or investment activities, including --

(A) business planning;

(B) financial and credit counseling; and

(C) marketing and management assistance.

(10) Fund. The term "Fund" means the Community Development Financial Institutions Fund established under section 4703 (a) of this title.

(11) Indian reservation. The term "Indian reservation" has the same meaning as in section 1903 (10) of title 25, and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

(12) Indian tribe. The term "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 the special programs and services provided by the United States to Indians because of their status as Indians.

(13) Insured community development financial institution. The term "insured community development financial institution" means any community development financial institution that is an insured depository institution or an insured credit union.

(14) Insured credit union. The term "insured credit union" has the same meaning as in section 1752 (7) of this title.

(15) Insured depository institution. The term "insured depository institution" has the same meaning as in section 1813 of this title.
(16) Investment area. The term "investment area" means a geographic area (or areas) including an Indian reservation that --

(A)(i) meets objective criteria of economic distress developed by the Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, rural population outmigration, lag in population growth, and extent of blight and disinvestment; and

(ii) has significant unmet needs for loans or equity investments; or

(B) encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of title 26.

(17) Low-income. The term "low-income" means having an income, adjusted for family size, of not more than --

(A) for metropolitan areas, 80 percent of the area median income; and

(B) for nonmetropolitan areas, the greater of --

(i) 80 percent of the area median income; or

(ii) 80 percent of the statewide nonmetropolitan area median income.

(18) State. The term "State" has the same meaning as in section 1813 of this title.

(19) Subsidiary. The term "subsidiary" has the same meaning as in section 1813 of this title, except that a community development financial institution that is a corporation shall not be considered to be a subsidiary of any insured depository institution or depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation.

(20) Targeted population. The term "targeted population" means individuals, or an identifiable group of individuals, including an Indian tribe, who --

(A) are low-income persons; or

(B) otherwise lack adequate access to loans or equity investments.

(21) Training program. The term "training program" means the training program operated by the Fund under section 4708 of this title.
12 USC § 4703  Establishment of national Fund for community development banking

Reference

(a) Establishment.

(1) In general. There is established a corporation to be known as the Community Development Financial Institutions Fund that shall have the duties and responsibilities specified by this subchapter and subchapter II of this chapter. The Fund shall have succession until dissolved. The offices of the Fund shall be in Washington, D.C. The Fund shall not be affiliated with or be within any other agency or department of the Federal Government.

(2) Wholly owned Government corporation. The Fund shall be a wholly owned Government corporation in the executive branch and shall be treated in all respects as an agency of the United States, except as otherwise provided in this subchapter.

(b) Management of Fund.

(1) Appointment of Administrator. The management of the Fund shall be vested in an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall not engage in any other business or employment during service as the Administrator.

(2) Chief financial officer. The Administrator shall appoint a chief financial officer, who shall have the authority and functions of an agency Chief Financial Officer under section 902 of title 31. In the event of a vacancy in the position of the Administrator or during the absence or disability of the Administrator, the chief financial officer shall perform the duties of the position of Administrator.

(3) Other officers and employees. The Administrator may appoint such other officers and employees of the Fund as the Administrator determines to be necessary or appropriate.

(4) Expedited hiring. During the 2-year period beginning on September 23, 1994, the Administrator may --

(A) appoint and terminate the individuals referred to in paragraphs (2) and (3) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (3) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(c) General powers. In carrying out the functions of the Fund, the Administrator --

(1) shall have all necessary and proper authority to carry out this subchapter and subchapter II of
(2) shall have the power to adopt, alter, and use a corporate seal for the Fund, which shall be judicially noticed;

(3) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which business of the Fund may be conducted and such rules and regulations as may be necessary or appropriate to implement this subchapter and subchapter II of this chapter;

(4) may enter into, perform, and enforce such agreements, contracts, and transactions as may be deemed necessary or appropriate to the conduct of activities authorized under this subchapter and subchapter II of this chapter;

(5) may determine the character of and necessity for expenditures of the Fund and the manner in which they shall be incurred, allowed, and paid;

(6) may utilize or employ the services of personnel of any agency or instrumentality of the United States with the consent of the agency or instrumentality concerned on a reimbursable or nonreimbursable basis; and

(7) may execute all instruments necessary or appropriate in the exercise of any of the functions of the Fund under this subchapter and subchapter II of this chapter and may delegate to the officers of the Fund such of the powers and responsibilities of the Administrator as the Administrator deems necessary or appropriate for the administration of the Fund.

(d) Advisory Board.

(1) Establishment. There is established an advisory board to the Fund to be known as the Community Development Advisory Board, which shall be operated in accordance with the provisions of the Federal Advisory Committee Act, except that section 14 of that Act does not apply to the Board.

(2) Membership. The Board shall consist of 15 members, including --

(A) the Secretary of Agriculture or his or her designee;

(B) the Secretary of Commerce or his or her designee;

(C) the Secretary of Housing and Urban Development or his or her designee;

(D) the Secretary of the Interior or his or her designee;

(E) the Secretary of the Treasury or his or her designee;

(F) the Administrator of the Small Business Administration or his or her designee; and

(G) 9 private citizens, appointed by the President, who shall be selected, to the maximum extent practicable, to provide for national geographic representation and racial, ethnic, and gender diversity, including --
(i) 2 individuals who are officers of existing community development financial institutions;
(ii) 2 individuals who are officers of insured depository institutions;
(iii) 2 individuals who are officers of national consumer or public interest organizations;
(iv) 2 individuals who have expertise in community development; and
(v) 1 individual who has personal experience and specialized expertise in the unique lending and community development issues confronted by Indian tribes on Indian reservations.

(3) Chairperson. The members of the Board specified in paragraph (2)(G) shall select, by majority vote, a chairperson of the Board, who shall serve for a term of 2 years.

(4) Board function. It shall be the function of the Board to advise the Administrator on the policies of the Fund regarding activities under this subchapter. The Board shall not advise the Administrator on the granting or denial of any particular application.

(5) Terms of private members.

(A) In general. Each member of the Board appointed under paragraph (2)(G) shall serve for a term of 4 years.

(B) Vacancies. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the previous member was appointed shall be appointed for the remainder of such term. Members may continue to serve following the expiration of their terms until a successor is appointed.

(6) Meetings. The Board shall meet at least annually and at such other times as requested by the Administrator or the chairperson. A majority of the members of the Board shall constitute a quorum.

(7) Reimbursement for expenses. The members of the Board may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with the Federal Advisory Committee Act.

(8) Costs and expenses. The Fund shall provide to the Board all necessary staff and facilities.

(e) Omitted.

(f) Government Corporation Control Act exemption. Section 9107 (b) of title 31, shall not apply to deposits of the Fund made pursuant to section 4707 of this title.

(g) Limitation of Fund and Federal liability. The liability of the Fund and the United States Government arising out of any investment in a community development financial institution in accordance with this subchapter shall be limited to the amount of the investment. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, Territory, or the District of Columbia. Nothing in this subsection shall affect the application of any Federal tax law.
(h) Prohibition on issuance of securities. The Fund may not issue stock, bonds, debentures, notes, or other securities.

(i) Omitted.

(j) Assisted institutions not United States instrumentalities. A community development financial institution or other organization that receives assistance pursuant to this subchapter shall not be deemed to be an agency, department, or instrumentality of the United States.

(k) Transition period.

(1) In general. During the transition period, the Secretary of the Treasury may --

(A) assist in the establishment of the administrative functions of the Fund listed in paragraph (2); and

(B) hire not more than 6 individuals to serve as employees of the Fund during the transition period.

(2) Continued service. Individuals hired in accordance with paragraph (1)(B) may continue to serve as employees of the Fund after the transition period.

(3) Administrative functions. The administrative functions referred to in paragraph (1)(A) shall be limited to --

(A) establishing accounting, information, and recordkeeping systems for the Fund; and

(B) procuring office space, equipment, and supplies.

(4) Expedited hiring. During the transition period, the Secretary of the Treasury may --

(A) appoint and terminate the individuals referred to in paragraph (1)(B) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (1)(B) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(5) Certain employees. During the transition period, employees of the Department of the Treasury may only comprise less than one-half of the total number of individuals hired in accordance with paragraph (1)(B).

(6) Transition expenses. Amounts previously appropriated to the Department of the Treasury may be used to pay obligations and expenses of the Fund incurred under this section, and such amounts may be reimbursed by the Fund to the Department of the Treasury from amounts appropriated to the Fund for fiscal year 1995.
(7) "Transition period" defined. For purposes of this subsection, the term "transition period" means the period beginning on September 23, 1994, and ending on the date on which the Administrator is appointed.
12 USC § 4704  Applications for assistance

Reference

(a) Form and procedures. An application for assistance under this subchapter shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

(b) Minimum requirements. Except as provided in sections 4705 and 4712 of this title, the Fund shall require an application --

(1) to establish that the applicant is, or will be, a community development financial institution;

(2) to include a comprehensive strategic plan for the organization that contains --

(A) a business plan of not less than 5 years in duration that demonstrates that the applicant will be properly managed and will have the capacity to operate as a community development financial institution that will not be dependent upon assistance from the Fund for continued viability;

(B) an analysis of the needs of the investment area or targeted population and a strategy for how the applicant will attempt to meet those needs;

(C) a plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs, and private sector financial services;

(D) an explanation of how the proposed activities of the applicant are consistent with existing economic, community, and housing development plans adopted by or applicable to an investment area or targeted population; and

(E) a description of how the applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to investment areas or targeted populations;

(3) to include a detailed description of the applicant's plans and likely sources of funds to match the amount of assistance requested from the Fund;

(4) in the case of an applicant that has previously received assistance under this subchapter, to demonstrate that the applicant --

(A) has substantially met its performance goals and otherwise carried out its responsibilities under this subchapter and the assistance agreement; and

(B) will expand its operations into a new investment area or serve a new targeted population, offer more products or services, or increase the volume of its business;

(5) in the case of an applicant with a prior history of serving investment areas or targeted populations, to demonstrate that the applicant --

(A) has a record of success in serving investment areas or targeted populations; and
(B) will expand its operations into a new investment area or to serve a new targeted population, offer more products or services, or increase the volume of its current business; and

(6) to include such other information as the Fund deems appropriate.

(c) Preapplication outreach program. The Fund shall provide an outreach program to identify and provide information to potential applicants and may provide technical assistance to potential applicants, but shall not assist in the preparation of any application.
12 USC § 4705  Community partnerships

Reference

(a) Application. An application for assistance may be filed jointly by a community development financial institution and a community partner to carry out a community partnership.

(b) Application requirements. The Fund shall require a community partnership application --

(1) to meet the minimum requirements established for community development financial institutions under section 4704 (b) of this title, except that the criteria specified in paragraphs (1) and (2)(A) of section 4704 (b) of this title shall not apply to the community partner;

(2) to describe how each coapplicant will participate in carrying out the community partnership and how the partnership will enhance activities serving the investment area or targeted population; and

(3) to demonstrate that the community partnership activities are consistent with the strategic plan submitted by the community development financial institution coapplicant.

(c) Selection criteria. The Fund shall consider a community partnership application based on --

(1) the community development financial institution coapplicant --

(A) meeting the minimum selection criteria described in section 4704 of this title; and

(B) satisfying the selection criteria of section 4706 of this title;

(2) the extent to which the community partner coapplicant will participate in carrying out the partnership;

(3) the extent to which the community partnership will enhance the likelihood of success of the community development financial institution coapplicant’s strategic plan; and

(4) the extent to which service to the investment area or targeted population will be better performed by a partnership as opposed to the individual community development financial institution coapplicant.

(d) Limitation on distribution of assistance. Assistance provided upon approval of an application under this section shall be distributed only to the community development financial institution coapplicant, and shall not be used to fund any activities carried out directly by the community partner or an affiliate or subsidiary thereof.

(e) Other requirements and limitations. All other requirements and limitations imposed by this subchapter on a community development financial institution assisted under this subchapter shall apply (in the manner that the Fund determines to be appropriate) to assistance provided to carry out community partnerships. The Fund may establish additional guidelines and restrictions on the use of Federal funds to carry out community partnerships.
12 USC § 4706 Selection of institutions

Reference

(a) Selection criteria. Except as provided in section 4712 of this title, the Fund shall, in its sole discretion, select community development financial institution applicants meeting the requirements of section 4704 of this title for assistance based on --

(1) the likelihood of success of the applicant in meeting the goals of its comprehensive strategic plan;

(2) the experience and background of the management team;

(3) the extent of need for equity investments, loans, and development services within the investment areas or targeted populations;

(4) the extent of economic distress within the investment areas or the extent of need within the targeted populations, as those factors are measured by objective criteria;

(5) the extent to which the applicant will concentrate its activities on serving its investment areas or targeted populations;

(6) the amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the match;

(7) the extent to which the matching funds are derived from private sources;

(8) the extent to which the proposed activities will expand economic opportunities within the investment areas or the targeted populations;

(9) whether the applicant is, or will become, an insured community development financial institution;

(10) the extent of support from the investment areas or targeted populations;

(11) the extent to which the applicant is, or will be, community-owned or community-governed;

(12) the extent to which the applicant will increase its resources through coordination with other institutions or participation in a secondary market;

(13) in the case of an applicant with a prior history of serving investment areas or targeted populations, the extent of success in serving them; and

(14) other factors deemed to be appropriate by the Fund.

(b) Geographic diversity. In selecting applicants for assistance, the Fund shall seek to fund a geographically diverse group of applicants, which shall include applicants from metropolitan, nonmetropolitan, and rural areas.
12 USC § 4707  Assistance provided by Fund

Reference

(a) Forms of assistance.

(1) In general. The Fund may provide --

(A) financial assistance through equity investments, deposits, credit union shares, loans, and grants; and

(B) technical assistance --

(i) directly;

(ii) through grants; or

(iii) by contracting with organizations that possess expertise in community development finance, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(2) Equity investments.

(A) Limitation on equity investments. The Fund shall not own more than 50 percent of the equity of a community development financial institution and may not control the operations of such institution. The Fund may hold only transferable, nonvoting equity investments in the institution. Such equity investments may provide for convertibility to voting stock upon transfer by the Fund.

(B) Fund deemed not to control. Notwithstanding any other provision of law, the Fund shall not be deemed to control a community development financial institution by reason of any assistance provided under this subchapter for the purpose of any other applicable law to the extent that the Fund complies with subparagraph (A). Nothing in this subparagraph shall affect the application of any Federal tax law.

(3) Deposits. Deposits made pursuant to this section in an insured community development financial institution shall not be subject to any requirement for collateral or security.

(4) Limitations on obligations. Direct loan obligations may be incurred by the Fund only to the extent that appropriations of budget authority to cover their cost, as defined in section 661a (5) of title 2, are made in advance.

(b) Uses of financial assistance.

(1) In general. Financial assistance made available under this subchapter may be used by assisted community development financial institutions to serve investment areas or targeted populations by developing or supporting --

(A) commercial facilities that promote revitalization, community stability, or job creation or
retention;

(B) businesses that --
(i) provide jobs for low-income people or are owned by low-income people; or
(ii) enhance the availability of products and services to low-income people;

(C) community facilities;

(D) the provision of basic financial services;

(E) housing that is principally affordable to low-income people, except that assistance used to facilitate homeownership shall only be used for services and lending products --
(i) that serve low-income people; and
(ii) that --
(I) are not provided by other lenders in the area; or
(II) complement the services and lending products provided by other lenders that serve the investment area or targeted population; and

(F) other businesses and activities deemed appropriate by the Fund.

(2) Limitations. No assistance made available under this subchapter may be expended by a community development financial institution (or an organization receiving assistance under section 4712 of this title) to pay any person to influence or attempt to influence any agency, elected official, officer, or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement (as such terms are defined in section 1352 of title 31).

(c) Uses of technical assistance.

(1) Types of activities. Technical assistance may be used for activities that enhance the capacity of a community development financial institution, such as training of management and other personnel and development of programs and investment or loan products.

(2) Availability of technical assistance. The Fund may provide technical assistance, regardless of whether or not the recipient also receives financial assistance under this section.

(d) Amount of assistance.

(1) In general. Except as provided in paragraph (2), the Fund may provide not more than $5,000,000 of assistance, in the aggregate, during any 3-year period to any 1 community development financial institution and its subsidiaries and affiliates.

(2) Exception. The Fund may provide not more than $3,750,000 of assistance in addition to the amount specified in paragraph (1) during the same 3-year period to an existing community
development financial institution that proposes to establish a subsidiary or affiliate for the purpose of serving an investment area or targeted population outside of any State and outside of any metropolitan area presently served by the institution, if --

(A) the subsidiary or affiliate --

(i) would be a community development financial institution; and

(ii) independently --

(I) meets the selection criteria described in section 4704 of this title; and

(II) satisfies the selection criteria of section 4706 of this title; and

(B) no other application for assistance to serve the investment area or targeted population has been submitted to the Administrator within a reasonable period of time preceding the date of receipt of the application at issue.

(3) Timing of assistance. Assistance may be provided as described in paragraphs (1) and (2) in a lump sum or over a period of time, as determined by the Fund.

(e) Matching requirements.

(1) In general. Assistance other than technical assistance shall be matched with funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. The Fund shall provide no assistance (other than technical assistance) until a community development financial institution has secured firm commitments for the matching funds required.

(2) Exception. In the case of an applicant with severe constraints on available sources of matching funds, the Fund may permit an applicant to comply with the matching requirements of paragraph (1) by --

(A) reducing such matching requirement by 50 percent; or

(B) permitting an applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such applicant --

(i) has total assets of less than $100,000;

(ii) serves nonmetropolitan or rural areas; and

(iii) is not requesting more than $25,000 in assistance.

(3) Limitation. Not more than 25 percent of the total funds disbursed in any fiscal year by the Fund may be matched as authorized under paragraph (2).

(4) Construction of "Federal Government funds". For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42
U.S.C. 5305 (a)(9)), funds provided pursuant to such Act shall be considered to be Federal Government funds.

(f) Terms and conditions.

(1) Soundness of unregulated institutions. The Fund shall --

(A) ensure, to the maximum extent practicable, that each community development financial institution (other than an insured community development financial institution or depository institution holding company) assisted under this subchapter is financially and managerially sound and maintains appropriate internal controls;

(B) require such institution to 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 report required by section 4714 (e)(1) of this title; and

(C) require that all assistance granted under this section is used by the community development financial institution or community development partnership in a manner consistent with the purposes of this subchapter.

(2) Assistance agreement.

(A) In general. Before providing any assistance under this subchapter, the Fund and each community development financial institution to be assisted shall enter into an agreement that requires the institution to comply with performance goals and abide by other terms and conditions pertinent to assistance received under this subchapter.

(B) Performance goals. Performance goals shall be negotiated between the Fund and each community development financial institution receiving assistance based upon the strategic plan submitted pursuant to section 4704 (b)(2) of this title. Such goals may be modified with the consent of the parties, or as provided in subparagraph (C). Performance goals for insured community development financial institutions shall be determined in consultation with the appropriate Federal banking agency.

(C) Sanctions. The agreement shall provide that, in the event of fraud, mismanagement, noncompliance with this subchapter, or noncompliance with the terms of the agreement, the Fund, in its discretion, may --

(i) require changes to the performance goals imposed pursuant to subparagraph (B);

(ii) require changes to the strategic plan submitted pursuant to section 4704 (b)(2) of this title;

(iii) revoke approval of the application;

(iv) reduce or terminate assistance;

(v) require repayment of assistance;

(vi) bar an applicant from reapplying for assistance from the Fund; and
(vii) take such other actions as the Fund deems appropriate.

(D) Consultation with tribal governments. In reviewing the performance of any assisted community development financial institution, the investment area of which includes an Indian reservation, or the targeted population of which includes an Indian tribe, the Fund shall consult with, and seek input from, any appropriate tribal government.

(g) Authority to sell equity investments and loans. The Fund may, at any time, sell its equity investments and loans, but the Fund shall retain the power to enforce limitations on assistance entered into in accordance with the requirements of this subchapter until the performance goals related to the investment or loan have been met.

(h) No authority to limit supervision and regulation. Nothing in this subchapter shall affect any authority of the appropriate Federal banking agency to supervise and regulate any institution or company.
12 USC § 4708  Training

Reference

(a) In general. The Fund may operate a training program to increase the capacity and expertise of community development financial institutions and other members of the financial services industry to undertake community development finance activities.

(b) Program activities. The training program shall provide educational programs to assist community development financial institutions and other members of the financial services industry in developing lending and investment products, underwriting and servicing loans, managing equity investments, and providing development services targeted to areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(c) Participation. The training program shall be made available to community development financial institutions and other members of the financial services industry that serve or seek to serve areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(d) Contracting. The Fund may offer the training program described in this section directly or through a contract with other organizations. The Fund may contract to provide the training program through organizations that possess special expertise in community development, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(e) Coordination. The Fund shall coordinate with other appropriate Federal departments or agencies that operate similar training programs in order to prevent duplicative efforts.

(f) Regulatory fee for providing training services.

(1) General rule. The Fund may, at the discretion of the Administrator and in accordance with this subsection, assess and collect regulatory fees solely to cover the costs of the Fund in providing training services under a training program operated in accordance with this section.

(2) Persons subject to fee. Fees may be assessed under paragraph (1) only on persons who participate in the training program.

(3) Limitation on manner of collection. Fees may be assessed and collected under this subsection only in such manner as may reasonably be expected to result in the collection of an aggregate amount of fees during any fiscal year which does not exceed the aggregate costs of the Fund for such year in providing training services under a training program operated in accordance with this section. So in original. Probably should be followed by a period.

(4) Limitation on amount of fee. The amount of any fee assessed under this subsection on any person may not exceed the amount which is reasonably based on the proportion of the training services provided under a training program operated in accordance with this section which relate
to such person.
12 USC § 4709  Encouragement of private entities

Reference

The Fund may facilitate the organization of corporations in which the Federal Government has no ownership interest. The purpose of any such entity shall be to assist community development financial institutions in a manner that is complementary to the activities of the Fund under this subchapter. Any such entity shall be managed exclusively by persons not employed by the Federal Government or any agency or instrumentality thereof, or by any State or local government or any agency or instrumentality thereof.
12 USC § 4710  Collection and compilation of information

Reference

The Fund shall --

(1) collect and compile information pertinent to community development financial institutions that will assist in creating, developing, expanding, and preserving such institutions; and

(2) make such information available to promote the purposes of this subchapter.
12 USC § 4711  Investment of receipts and proceeds

Reference

(a) Establishment of account. Any dividends on equity investments and proceeds from the disposition of investments, deposits, or credit union shares that are received by the Fund as a result of assistance provided pursuant to section 4707 or 4712 of this title, and any fees received pursuant to section 4708 (f) of this title shall be deposited and accredited to an account of the Fund in the United States Treasury (hereafter in this section referred to as "the account") established to carry out the purpose of this subchapter.

(b) Investments. Upon request of the Administrator, the Secretary of the Treasury shall invest amounts deposited in the account in public debt securities with maturities suitable to the needs of the Fund, as determined by the Administrator, and bearing interest at rates determined by the Secretary of the Treasury, comparable to current market yields on outstanding marketable obligations of the United States of similar maturities.

(c) Availability. Amounts deposited into the account and interest earned on such amounts pursuant to this section shall be available to the Fund until expended.
12 USC § 4712 Capitalization assistance to enhance liquidity

Reference

(a) Assistance.

(1) In general. The Fund may provide assistance for the purpose of providing capital to organizations to purchase loans or otherwise enhance the liquidity of community development financial institutions, if --

(A) the primary purpose of such organizations is to promote community development; and

(B) any assistance received is matched with funds --

(i) from sources other than the Federal Government;

(ii) on the basis of not less than one dollar for each dollar provided by the Fund; and

(iii) that are comparable in form and value to the assistance provided by the Fund.

(2) Limitation on other assistance. An organization that receives assistance under this section may not receive other financial or technical assistance under this subchapter.

(3) Construction of Federal Government funds. For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305 (a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

(b) Selection. The selection of organizations to receive assistance under this section shall be at the discretion of the Fund and in accordance with criteria established by the Fund. In establishing such criteria, the Fund shall take into account the criteria contained in sections 4704 (b) and 4706 of this title, as appropriate.

(c) Amount of assistance. The Fund may provide a total of not more than $5,000,000 of assistance to an organization or its subsidiaries or affiliates under this section during any 3-year period. Assistance may be provided in a lump sum or over a period of time, as determined by the Fund.

(d) Audit and report requirements. Organizations that receive assistance from the Fund in accordance with this section shall --

(1) submit to the Fund, not less than once in every 18-month period, financial statements audited by an independent certified public accountant, as part of the report required by paragraph (2);

(2) submit an annual report on its activities; and

(3) keep such records as may be necessary to disclose the manner in which any assistance under this section is used.

(e) Limitations on liability.
(1) Liability of Fund. The liability of the Fund and the United States Government arising out of the provision of assistance to any organization in accordance with this section shall be limited to the amount of such assistance. The Fund shall be exempt from any assessments and any other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, or territory. Nothing in this paragraph shall affect the application of Federal tax law.

(2) Liability of Government. This section does not oblige the Federal Government, either directly or indirectly, to provide any funds to any organization assisted pursuant to this section, or to honor, reimburse, or otherwise guarantee any obligation or liability of such an organization. This section shall not be construed to imply that any such organization or any obligations or securities of any such organization are backed by the full faith and credit of the United States.

(f) Use of proceeds. Any proceeds from the sale of loans by an organization assisted under this section shall be used by the seller for community development purposes.
12 USC § 4713  Incentives for depository institution participation

Reference

(a) Function of Administrator.

(1) In general. Of any funds appropriated pursuant to the authorization in section 4718 (a) of this title, the funds made available for use in carrying out this section in accordance with section 4718 (a)(4) of this title shall be administered by the Administrator of the Fund, in consultation with --

(A) the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and the National Credit Union Administration;

(B) the individuals named pursuant to clauses (ii) and (iv) of section 4703 (d)(2)(G) of this title; and

(C) any other representatives of insured depository institutions or other persons as the Administrator may determine to be appropriate.

(2) Applicability of Bank Enterprise Act of 1991. Subject to subsection (b) of this section and the consultation requirement of paragraph (1) --

(A) section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] shall be applicable to the Administrator, for purposes of this section, in the same manner and to the same extent that such section is applicable to the Community Enterprise Assessment Credit Board;

(B) the Administrator shall, for purposes of carrying out this section and section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] --

(i) have all powers and rights of the Community Enterprise Assessment Credit Board under section 233 of the Bank Enterprise Act of 1991 to administer and enforce any provision of such section 233 which is applicable to the Administrator under this section; and

(ii) shall be subject to the same duties and restrictions imposed on the Community Enterprise Assessment Credit Board; and

(C) the Administrator shall --

(i) have all powers and rights of an appropriate Federal banking agency under section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a (b)(2)] to approve or disapprove the designation of qualified distressed communities for purposes of this section and provide information and assistance with respect to any such designation; and

(ii) shall be subject to the same duties imposed on the appropriate Federal banking agencies under such section 233 (b)(2).

(3) Awards. The Administrator shall determine the amount of assessment credits, and shall make awards of those credits.
(4) Regulations and guidelines. The Administrator may prescribe such regulations and issue such guidelines as the Administrator determines to be appropriate to carry out this section.


(b) Provisions relating to administration of this section.

(1) New lifeline accounts. In applying section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] for purposes of this section, the Administrator shall treat the provision of new lifeline accounts by an insured depository institution as an activity which is qualified to be taken into account under section 233(a)(2)(A) of such Act.

(2) Determination of assessment credit. For the purpose of this subchapter, section 233(a)(3) of the Bank Enterprise Act of 1991 (12 U.S.C. 1834a (a)(3)) shall be applied by substituting the following text:

"(3) Amount of assessment credit. The amount of an assessment credit which may be awarded to an insured depository institution to carry out the qualified activities of the institution or of the subsidiaries of the institution pursuant to this section for any semiannual period shall be equal to the sum of --

(A) with respect to qualifying activities described in paragraph (2)(A), the amount which is equal to --

(i) 5 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is not a community development financial institution; or

(ii) 15 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is a community development financial institution; and

(B) with respect to qualifying activities described in paragraph (2)(C), 15 percent of the amounts determined under such subparagraph."

(3) Adjustment of percentage. Section 233(a)(5) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a (a)(5)] shall be applied for purposes of this section by --

(A) substituting "institutions which are community development financial institutions" for "institutions which meet the community development organization requirements under section 234 [12 U.S.C. 1834b]"; and

(B) substituting "institutions which are not community development financial institutions" for "institutions which do not meet such requirements".

(b)(2)] shall be applied for purposes of this section without regard to subparagraph (A)(ii) of such section 233 (b)(2).

(5) Operation on annual basis. The Administrator may, in the Administrator's discretion, apply section 233 of the Bank Enterprise Act of 1991 for purposes of this section by providing community enterprise assessment credits with respect to annual periods rather than semiannual periods.

(6) Outreach. The Administrator shall ensure that information about the Bank Enterprise Act of 1991 under this section is widely disseminated to all interested parties.

(7) Qualified activities. For the purpose of this subchapter, section 233(a)(2)(A) of the Bank Enterprise Act of 1991 shall be applied by inserting "of the increase" after "the amount".
12 USC § 4714  Recordkeeping

Reference

(a) In general. A community development financial institution receiving assistance from the Fund shall keep such records, for such periods as may be prescribed by the Fund and necessary to disclose the manner in which any assistance under this subchapter is used and to demonstrate compliance with the requirements of this subchapter.

(b) User profile information. The Fund shall require each community development financial institution or other organization receiving assistance from the Fund to compile such data, as is determined to be appropriate by the Fund, on the gender, race, ethnicity, national origin, or other pertinent information concerning individuals that utilize the services of the assisted institution to ensure that targeted populations and low-income residents of investment areas are adequately served.

(c) Access to records. The Fund shall have access on demand, for the purpose of determining compliance with this subchapter, to any records of a community development financial institution or other organization that receives assistance from the Fund.

(d) Review. Not less than annually, the Fund shall review the progress of each assisted community development financial institution in carrying out its strategic plan, meeting its performance goals, and satisfying the terms and conditions of its assistance agreement.

(e) Reporting.

(1) Annual reports. The Fund shall require each community development financial institution receiving assistance under this subchapter to submit an annual report to the Fund on its activities, its financial condition, and its success in meeting performance goals, in satisfying the terms and conditions of its assistance agreement, and in complying with other requirements of this subchapter, in such form and manner as the Fund shall specify.

(2) Availability of reports. The Fund, after deleting or redacting any material as appropriate to protect privacy or proprietary interests, shall make such reports submitted under paragraph (1) available for public inspection.
12 USC § 4715  Special provisions with respect to institutions that are supervised by Federal banking agencies

Reference

(a) Consultation with appropriate agencies. The Fund shall consult with and consider the views of the appropriate Federal banking agency prior to providing assistance under this subchapter to --

(1) an insured community development financial institution;

(2) any community development financial institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency; or

(3) any community development financial institution that has as its community partner an institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(b) Requests for information, reports, or records.

(1) In general. Except as provided in paragraph (4), notwithstanding any other provisions of this subchapter, prior to directly requesting information from or imposing reporting or recordkeeping requirements on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, the Fund shall consult with the appropriate Federal banking agency to determine if the information requested is available from or may be obtained by such agency in the form, format, or detail required by the Fund.

(2) Timing of response from appropriate Federal banking agency. If the information, reports, or records requested by the Fund pursuant to paragraph (1) are not provided by the appropriate Federal banking agency in less than 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the recordkeeping or reporting requirements directly on such institutions with notice to the appropriate Federal banking agency.

(3) Elimination of duplicative information and reporting requirements. The Fund shall use any information provided the appropriate Federal banking agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and recordkeeping by an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(4) Exception. Notwithstanding paragraphs (1) and (2), the Fund may require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency to provide information with respect to the institution's implementation of its strategic plan or compliance with the terms of its assistance agreement under this subchapter, after providing notice to the appropriate Federal banking agency.
(c) Exclusion for examination reports. Nothing in this section shall be construed to permit the Fund to require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, to obtain, maintain, or furnish an examination report of any appropriate Federal banking agency or records contained in or related to such a report.

(d) Sharing of information. The Fund and the appropriate Federal banking agency shall promptly notify each other of material concerns about an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, and share appropriate information relating to such concerns.

(e) Disclosure prohibited. Neither the Fund nor the appropriate Federal banking agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(f) Privilege maintained. The Fund, the appropriate Federal banking agency, and any other party providing information under this section shall not be deemed to have waived any privilege applicable to any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) Exceptions. Nothing in this section shall authorize the Fund or the appropriate Federal banking agency to withhold information from the Congress or prevent it from complying with a request for information from a Federal department or agency in compliance with applicable law.

(h) Sanctions.

(1) Notification. The Fund shall notify the appropriate Federal banking agency before imposing any sanction pursuant to the authority in section 4707(f)(2)(C) of this title on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of that agency.

(2) Exceptions. The Fund shall not impose a sanction referred to in paragraph (1) if the appropriate Federal banking agency, in writing, not later than 30 calendar days after receiving notice from the Fund --

(A) objects to the proposed sanction;

(B) 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;

(C) proposes a comparable alternative action; and

(D) specifically explains --
(i) the basis for the determination under subparagraph (B) and, if appropriate, provides documentation to support the determination; and

(ii) how the alternative action suggested pursuant to subparagraph (C) would be as effective as the sanction proposed by the Fund in securing compliance with this subchapter and deterring future noncompliance.

(i) Safety and soundness considerations. The Fund and each appropriate Federal banking agency shall cooperate and respond to requests from each other and from other appropriate Federal banking agencies in a manner that ensures the safety and soundness of the insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.
12 USC § 4716  Studies and reports; examination and audit

Reference

[Changes effective July 30, 2008]

(a) Annual report by Fund. The Fund shall conduct an annual evaluation of the activities carried out by the Fund and the community development financial institutions and other organizations assisted pursuant to this subchapter, and shall submit a report of its findings to the President and the Congress not later than 120 days after the end of each fiscal year of the Fund. The report shall include financial statements audited in accordance with subsection (f) of this section.

(b) Optional studies. The Fund may conduct such studies as the Fund determines necessary to further the purpose of this subchapter and to facilitate investment in distressed communities. The findings of any studies conducted pursuant to this subsection shall be included in the report required by subsection (a) of this section.

(c) Native American lending study.

(1) In general. The Fund shall conduct a study on lending and investment practices on Indian reservations and other land held in trust by the United States. Such study shall --

(A) identify barriers to private financing on such lands; and

(B) identify the impact of such barriers on access to capital and credit for Native American populations.

(2) Report. Not later than 12 months after the date on which the Administrator is appointed, the Fund shall submit a report to the President and the Congress that --

(A) contains the findings of the study conducted under paragraph (1);

(B) recommends any necessary statutory and regulatory changes to existing Federal programs; and

(C) makes policy recommendations for community development financial institutions, insured depository institutions, secondary market institutions, and other private sector capital institutions to better serve such populations.

(d) Investment, governance, and role of Fund. Thirty months after the appointment and qualification of the Administrator, the Comptroller General of the United States shall submit to the President and the Congress a study evaluating the structure, governance, and performance of the Fund.

(e) Consultation. In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Federal Housing Finance Agency, the Farm Credit Administration, the Director of the Office of
Thrift Supervision, the National Credit Union Administration Board, Indian tribal governments, community reinvestment organizations, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

(f) Examination and audit. The financial statements of the Fund shall be audited in accordance with section 9105 of title 31, except that audits required by section 9105(a) of such title shall be performed annually.
12 USC § 4717  Enforcement

Reference

(a) Regulations.

(1) In general. Not later than 180 days after the appointment and qualification of the Administrator, the Fund shall promulgate such regulations as may be necessary to carry out this subchapter.

(2) Regulations required. The regulations promulgated under paragraph (1) shall include regulations applicable to community development financial institutions that are not insured depository institutions to --

(A) prevent conflicts of interest on the part of directors, officers, and employees of community development financial institutions as the Fund determines to be appropriate; and

(B) establish such standards with respect to loans by a community development financial institution to any director, officer, or employee of such institution as the Fund determines to be appropriate, including loan amount limitations.

(b) Administrative enforcement. The provisions of this subchapter, and regulations prescribed and agreements entered into under this subchapter, shall be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by the appropriate Federal banking agency, in the case of an insured community development financial institution. A violation of this subchapter, or any regulation prescribed under or any agreement entered into under this subchapter, shall be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].
12 USC § 4718  Authorization of appropriations

Reference

(a) Fund authorization.

(1) In general. To carry out this subchapter, there are authorized to be appropriated to the Fund, to remain available until expended --

(A) $60,000,000 for fiscal year 1995;
(B) $104,000,000 for fiscal year 1996;
(C) $107,000,000 for fiscal year 1997; and
(D) $111,000,000 for fiscal year 1998;

or such greater sums as may be necessary to carry out this subchapter.

(2) Administrative expenses.

(A) In general. Of amounts authorized to be appropriated to the Fund pursuant to this section, not more than $5,550,000 may be used by the Fund in each fiscal year to pay the administrative costs and expenses of the Fund. Costs associated with the training program established under section 4708 of this title and the technical assistance program established under section 4707 of this title shall not be considered to be administrative expenses for purposes of this paragraph.

(B) Calculations. The amounts referred to in paragraphs (3) and (4) shall be calculated after subtracting the amount referred to in subparagraph (A) of this paragraph from the total amount appropriated to the Fund in accordance with paragraph (1) in any fiscal year.

(3) Capitalization assistance. Not more than 5 percent of the amounts authorized to be appropriated under paragraph (1) may be used as provided in section 4712 of this title.

(4) Availability for funding section 4713 of this title 33 1/3 percent of the amounts appropriated to the Fund for any fiscal year pursuant to the authorization in paragraph (1) shall be available for use in carrying out section 4713 of this title.

(5) Support of community development financial institutions. The Administrator shall allocate funds authorized under this section, to the maximum extent practicable, for the support of community development financial institutions.

(b) Community Development Credit Union Revolving Loan Fund. There are authorized to be appropriated for the purposes of the Community Development Credit Union Revolving Loan Fund --

(1) $4,000,000 for fiscal year 1995;
(2) $2,000,000 for fiscal year 1996;
(3) $2,000,000 for fiscal year 1997; and
(4) $2,000,000 for fiscal year 1998.

(c) Budgetary treatment. Amounts authorized to be appropriated under this section shall be subject to discretionary spending caps, as provided in section 665 of title 2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs. Section 665 of title 2, referred to in subsec. (c), was repealed by Pub.L. 105-33, title X, Sec. 10118(a), Aug. 5, 1997, 111 Stat. 695.