

**DEPARTMENT OF THE TREASURY****Community Development Financial Institutions Fund****12 CFR Part 1806**

RIN 1505-AA71

**Bank Enterprise Award Program**

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Revised interim rule with request for comment.

**SUMMARY:** The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award Program administered by the Community Development Financial Institutions Fund. The program was authorized by the Community Development and Financial Institutions Act of 1994. The programs of the CDFI Fund are intended to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry.

**DATES:** Interim rule effective March 7, 1997; comments must be received on or before July 7, 1997.

**ADDRESSES:** All comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Comments may be inspected at the above address between 9:30 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Kirsten S. Moy, Director, the Community Development Financial Institutions Fund at (202) 622-8662. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:****I. General***Executive Order (E.O.) 12866*

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Because no substantive changes were made to this regulation subsequent to submission to the Office of Management and Budget (OMB), the provisions of section 6(a)(3)(E) of the E.O. do not apply.

*Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the

Department of the Treasury finds that any economic or other consequence of this revised interim rule is a direct result of the implementation of statutory provisions.

*Paperwork Reduction Act*

The Department of the Treasury is issuing these revised interim regulations without notice and public comment pursuant to the Administrative Procedures Act (5 U.S.C. 553). For this reason, the collections of information contained in these revised regulations have been reviewed and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1505-0153 (expires 08/31/97). Comments concerning the collections of information, the accuracy of the estimated average annual burden, and the reduction of such burden should be directed to the Office of Management and Budget, Paperwork Reduction Projection (OMB Paperwork control number 1505-0153), Washington, DC 20503, with copies to the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Any such comments should be submitted not later than July 7, 1997.

Provisions requiring the collection of information can be found in §§ 1806.206, 1806.301, 1806.304, and 1806.305 of these regulations. The information requested in such provisions is necessary to evaluate applications, monitor the performance of entities receiving assistance, and ensure compliance with statutory and program requirements. The anticipated respondents and recordkeepers are financial institutions that may apply for and receive assistance.

*Estimated total annual reporting and/or recordkeeping burden:* 750 hours.

*Estimated average annual burden hours per respondent and/or recordkeeper:* 10 hours.

*Estimated number of respondents and/or recordkeepers:* 75.

*Estimated annual frequency of responses:* 1-2.

*National Environmental Policy Act*

Pursuant to Treasury Directive 75-02 (Department of the Treasury Environmental Quality Program), the Department has determined that these revised interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

*Administrative Procedures Act*

Pursuant to the provisions of 5 U.S.C. 553(a)(2), these revised regulations are

exempt from the proposed rule-making requirements of 5 U.S.C. 553(b) and are being issued as revised interim regulations without opportunity for notice and public comment prior to their effective date. Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. Congress appropriated funds for the CDFI Fund in FY 1996 and required such funds to be obligated by September 30, 1997. The Fund is required by statute to make one-third of each fiscal year's appropriated program funds available in order to implement the Bank Enterprise Award (BEA) Program. Such actions clearly indicate Congress' intent that the BEA Program be implemented in an expeditious manner. The amendments to the interim rule originally issued on October 19, 1995, and subsequently amended on January 23, 1996, February 29, 1996, and November 25, 1996, herein are intended to make the program easier for Applicants to participate and reduce regulatory burden. If the Department does not issue these regulations for effect, it will not be feasible to implement the program, as amended prior to September 30, 1997, in a manner that better achieves the results intended by Congress.

*Catalog of Federal Financial Assistance Numbers*

Bank Enterprise Award Program—21.021.

**II. Background**

The CDFI Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the CDFI Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute.

Consistent with the placement and administration of the Fund within the Department's organizational structure, the Department of the Treasury's Inspector General will serve as the Inspector General for the Fund. Any individual who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided by the Fund is encouraged to report it to the Department of the Treasury's Office of Inspector General in writing or on the Inspector General's Hotline (toll free 1-800-359-3898). All telephone calls will be handled confidentially. Written complaints should be addressed to the U.S. Department of the Treasury, Office of Inspector General, Room 2412,

1500 Pennsylvania Avenue NW.,  
Washington, DC 20220.

All records and materials pertaining to the selection and awarding of assistance by the Fund shall be fully subject to the Freedom of Information Act. Interested parties should contact the U.S. Department of the Treasury, Office of the Assistant Secretary for Management, Disclosure Services at (202) 622-1500.

The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry. This initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left behind by the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, revitalizing neighborhoods, developing affordable housing, and unleashing the economic potential of small businesses. The CDFI Fund recognizes the important role traditional financial institutions have played, and should continue to play, in serving the credit needs of distressed communities and their residents. As a means of facilitating increased activity and innovation among traditional financial institutions, these revised regulations will implement the BEA Program. The BEA Program has its roots in the Federal Deposit Insurance Corporation Improvement Act of 1991. The Program was significantly modified as part of the CDFI Act to enable it to function as a companion to the CDFI Program. Together, the CDFI Program and BEA Program will promote activity among the spectrum of financial institutions that serve distressed communities.

The following revised interim regulations amend the BEA Program. Elsewhere in this issue of the Federal Register is a separate Notice of Funds Availability (NOFA) for this program. Final regulations will be published after receipt and consideration of public comments. Such public comments are extremely important to the development of the final regulations. The remainder of this background section provides a summary of the revised interim rule and the major amendments to the interim regulations that were originally published on October 19, 1995, and subsequently amended on January 23, 1996, February 29, 1996, and November 25, 1996.

### III. Bank Enterprise Award Program

#### *Subpart A—Overview*

Section 114 of the CDFI Act is based on the Bank Enterprise Act of 1991 and gives the Fund authority to implement, with some modifications, its provisions. The Bank Enterprise Act of 1991, though enacted in 1991, had not previously received appropriated funds for implementation.

The purpose of the BEA Program (12 CFR Part 1806) is to encourage insured depository institutions to increase loans, services, and technical assistance within distressed communities and to make Equity Investments or engage in CDFI Support Activities. The BEA Program rewards participating insured depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. Applicants are selected to participate in the Program through a competitive process which evaluates applications based on the value of proposed increases in their specified activities. Program participants receive monies only after successful completion of the specified activities.

#### *Subpart B—Public Comments on Previous Interim Rule*

The Fund received a modest number (3) of formal comments on the interim rule to this part published in the Federal Register on October 19, 1995, and amended on January 23, 1996, February 29, 1996, and November 25, 1996. The Fund also sought input on Program improvements from the approximately 50 Applicants to the Program during the first round and held a focus group in Chicago with several Program participants in October 1996 to solicit additional input. The Fund also solicited input at meetings and conferences of national community development trade organizations, as well as regional workshops hosted by the Federal Reserve System. Most of the revisions to the interim rule are based on comments received through these avenues.

Most of the issues raised by the formal comments involved elements of the Program which cannot be changed without statutory amendments. For example, all commenters expressed concerns that the "Distressed Community" (as defined in § 1806.200) designation requirements were difficult for both urban and rural communities to meet. Several suggestions were made to amend these requirements to correspond to the standards established by other Federal programs or agencies (i.e. Community Reinvestment Act, Home Mortgage Disclosure Act, HUD

affordable housing goal standards established for housing-related government-sponsored enterprises). Suggestions for technical amendments to the Program's statutory provisions to make it more compatible with the statutory provisions dealing with the CDFI Program were also put forth. In addition, commenters expressed a desire for a reduction in the information-tracking and reporting burden associated with the BEA Program.

The BEA statute requires the use of both U.S. Bureau of the Census and the U.S. Bureau of Labor Statistics (BLS). Furthermore, the BLS data specified in the statute is not available on a census tract basis. Thus, it was difficult for many Applicants to satisfy the Program requirements. Furthermore, although the BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be companion programs, the criteria for designating communities is different.

One commenter expressed concern that small banks in rural communities may experience greater difficulty in meeting the application requirements due to limitations on resources of smaller institutions. The Fund has responded by simplifying some of the Application and Program requirements in this revised rule. One commenter suggested that for the purpose of calculating BEA award amounts, grants to CDFIs used for operating purposes should be given the same consideration as grants used for building the capital of a CDFI. The Fund responded by removing this distinction. All commenters expressed a desire to simplify and streamline the Program requirements. The Fund has attempted to address these concerns with the changes discussed below.

The Fund informally solicited comments from Applicants participating in the Program. Participants cited several elements of the Program that they considered favorable. For example, the Program provides a new vehicle of opportunity for getting recognition for community development activities. Many Awardees indicated that they engaged in activities that support CDFIs for the first time or significantly increased the level of support provided to CDFIs over their historical support levels. Some Awardees reported that they intend to use their BEA funding to support future community development activities. However, the Fund received mixed feedback on the application process. Many Applicants expressed the opinion that the requirements for applying for assistance or reporting their

activities was simple and straightforward; others found it burdensome.

Some Applicants had difficulty with the eligibility requirements (as did many institutions that considered applying for assistance but did not submit an application because they could not meet the eligibility requirements). Specifically, the authorizing statute permits only insured depository institutions to apply. Insured depository institution Applicants can only report their Qualified Activities and the activities of their subsidiaries (not holding companies or non-insured depository institution subsidiaries of holding companies). However, many banks and thrifts carry out their community development activities through subsidiaries of their holding companies that are not insured depository institutions. Other Program participants expressed a desire to make the Program structure more flexible. Several suggestions were made to provide grants on a prospective basis (rather than retrospectively) so the Program could be used to catalyze different types of activity. Participants suggested that rather than looking at only one aspect of community development lending—increases in activity—the Program could be amended to give greater consideration to innovation, impact, or other qualitative aspects of an institution's activities. Implementation of many of the suggestions discussed above will require a statutory change and therefore are not reflected in the revised interim rule that follows.

In this revised interim rule, the Fund has sought to address difficulties experienced by Program participants during the first funding round that may be addressed without any statutory changes. First, the revised rule includes numerous changes that seek to streamline and simplify the Program and Application requirements. The revised rule clarifies the requirements for reporting and documenting eligible activities. The Fund will provide a BEA Help Desk that will be available to Applicants in designating their Distressed Communities and will provide a list of certified CDFIs as part of the application packet.

#### *Subpart C—Findings From the First Funding Round*

In the first funding round of the BEA Program, the Fund set aside \$15.5 million to distribute in awards to qualifying institutions. Approximately 50 institutions applied for assistance totaling \$13.5 million in requests at the

time the applications were submitted. The Fund received applications from institutions located in 18 states and the District of Columbia. Of these Applicants, 38 institutions received awards totaling \$13.1 million. Since the Program was undersubscribed, all Applicants that met the Program's basic statutory and regulatory requirements received an award. Applicants did not need to be competitively rated and ranked. Twelve institutions that applied for assistance did not receive awards because they did not meet the program requirements.

The awards ranged from \$3,750 to \$2.7 million; the median award received was approximately \$100,000. With respect to the types of institutions that received awards, 39% were national banks, 34% were state chartered commercial banks, 24% were Federal savings banks or thrifts, and 3% (1 Awardee) was a state chartered mutual savings bank. Awardees ranged in asset size from more than \$21 million to \$320 billion, as of the time that awards were obligated (16% under \$250 million in total assets; 14% between \$250 million and \$1 billion in total assets; 74% over \$1 billion in total assets).

Awardees engaged in a variety of activities. With regard to Equity Investments or other activities that support CDFIs, the Fund found that nearly two-thirds (63%) of all Awardees engaged in activities that support CDFIs. These Awardees provided support to 49 community based financial intermediaries through their BEA activities which generated nearly \$66 million in support for CDFIs. Of the support provided to CDFIs: 78% of all support was provided in the form of equity investments or capital grants; 21% was provided in the form of loans; and approximately 1% was provided in the form of operating grants, nonmember deposits in credit unions, and technical assistance. Thirty-seven percent of the Awardees engaged in the provision of direct lending or services within distressed neighborhoods. Through the Program, these Awardees reported a total of \$60.1 million in lending and service activities during the Assessment Period.

#### *Subpart D—General Provisions*

Section 1806.102 describes the Program's relationship to the CDFI Program (part 1805). To prevent Applicants from receiving more than one Federal award for a single activity, no CDFI may receive an award under the BEA Program if it: (1) Has an application pending under the CDFI Program; (2) has received assistance from the CDFI Program within the

preceding 12 months; or (3) has ever received assistance under the CDFI Program for the same activities proposed in a BEA Program application. Assistance provided to a CDFI by a BEA Program participant may be used by the CDFI as matching funds for the CDFI Program.

Section 1806.103(m) is amended to provide that any organization that is certified as a CDFI as of the end of the Assessment Period, and is a CDFI at the time of the Qualified Activity, shall be considered a CDFI for the purposes of the BEA Program. If an Applicant is proposing to make an Equity Investment in or engage in CDFI Support Activities with respect to an entity that has not been certified as a CDFI, such uncertified CDFI shall submit the information described in § 1805.701(b) of this chapter. Such information shall be submitted to the Fund as specified in the applicable NOFA published in the Federal Register. Certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. A list of organizations with current certifications may be obtained at the offices of the Fund. An Applicant should be aware that if it closes on an Equity Investment or CDFI Support Activity transaction prior to an uncertified CDFI's certification, such transaction may not be considered a Qualified Activity. The uncertified CDFI must qualify as a CDFI at the time of the transaction and must be certified as a CDFI by no later than the end of the applicable Assessment Period in order for the transaction to be deemed a Qualified Activity.

This revised interim rule makes technical amendments and clarifications to several terms. The term Eligible Development Activity is changed to Development and Services Activity. The term Commercial Real Estate Loan is modified to clarify the distinction between Business Loan and Agriculture Loans. The term Community Service is added as a new Development and Service Activity and includes the provision of technical assistance, counseling, and other services. These activities were described as Qualified Activities in Section 1806.201(x) through (xiii) of the interim rule published on October 19, 1995, as heretofore amended on January 23, 1996, February 29, 1996, and November 25, 1996, and must take place within a Distressed Community. The term CDFI Support Activity is added and includes loans, certain deposits, and technical assistance provided to CDFIs integrally involved with a Distressed Community. The term Equity Investment is amended to include all types of grants regardless

of use by recipients and the purchase of a partnership or limited liability company membership interest. The term Equity Investment is further clarified to describe various instruments that will be considered to be an Equity Investment including grants made to CDFIs. The Fund finds that grants are commonly used like equity (and often is more favorable) by a recipient CDFI to support its lending, investment, or other activities. Since the large majority of CDFIs are non-profit organizations and the Fund's authorizing statute intended that non-profit CDFIs benefit from its programs, the Fund has determined that it is consistent with the purposes of this Program to consider a grant to be a form of Equity Investment.

#### *Subpart E—Awards*

##### Distressed Community

Section 1806.200 describes the community eligibility and designation process. In the previous rule, an Applicant proposing to make Equity Investments in a CDFI in a Distressed Community was required to designate a Distressed Community (or Communities) at the time of application. In the revised rule, an insured depository institution applying for an award is required to designate a Distressed Community (or Communities) if it proposes to carry out Development and Services Activities and CDFI Support Activities. As a means of reducing the paperwork burden for Applicants, the Fund has eliminated the requirement that an Applicant that proposes to make an Equity Investment designate a Distressed Community at the time of application. In the event that the Fund's resources are oversubscribed, the Fund reserves the right to request that such Applicants provide this information.

The statute mandates that each designated Distressed Community meet certain geographic requirements and distress criteria. Under the geographic requirements, the community must be located within certain boundaries, its boundaries must be contiguous, and its population must meet certain requirements or must be located entirely within an Indian Reservation (as defined in the regulations). The distress criteria require that at least 30 percent of the residents have incomes which are less than the national poverty level and the unemployment rate for the area must be at least 1.5 times the national average (as determined by the Bureau of Labor Statistics' most recent figures). Such criteria are intended to ensure that BEA Program resources are targeted to

some of the most Distressed Communities in the nation.

##### Qualified Activities

In § 1806.201 the activities that Program participants may engage in are categorized as CDFI Related Activities and Development and Service Activities. Development and Service Activities include certain consumer, commercial real estate, single family, multi-family, business and agricultural loans, and Project Investments. Additional Development and Service Activities are deposit taking activities, Financial Service provision, and Community Services. Each of these activities is defined and must serve a Distressed Community. Each Development and Service Activity is assigned a priority factor based on the Fund's assessment of its degree of difficulty, the extent of innovation involved, and the extent of benefits provided to a Distressed Community by the activity. In developing the categories of Development and Service Activities, the Fund sought to minimize recordkeeping and reporting burdens. The CDFI Related Activities include Equity Investments and CDFI Support Activities.

The rule is amended to prohibit an Applicant from receiving an award for activities for which the Applicant may receive a benefit through the Low Income Housing Tax Credit. In no case shall such activities be considered an Equity Investment, Project Investment, or other Qualified Activity for the purpose of calculating an award. The Department of the Treasury is fully supportive of the Low Income Housing Tax Credit (LIHTC) as a critical tool for promoting investment in affordable housing. However, for the purposes of the BEA Program, investments made by an Applicant for which such Applicant receives a benefit through the LIHTC shall not be considered a Qualified Activity for several reasons. First, a well established market already exists for the LIHTC among investors, and the LIHTC provides sufficient returns to such investors that additional Federal subsidy is not necessary to prompt banks or thrifts to become investors in such an instrument. Second, generally in recent years, the LIHTC program has reached its statutorily-imposed limit. Thus, it is not clear that providing additional Federal subsidy through the BEA Program will result in affordable housing in addition to what would occur without such incentive. In the interests of using scarce Federal resources in a more effective manner, the Fund has determined that it is prudent to prohibit activities involving

the LIHTC from being counted as Qualified Activities for the purposes of this Program.

##### Measuring Activities

Section 1806.202 describes the methodology used to measure activities for the purpose of ranking Applications and determining award amounts. All Qualified Activities will be measured by the increases in value of the activities between a retroactive Baseline Period (for which the Applicant will provide historical data) and a prospective Assessment Period (for which the Applicant must project future activity levels). Dates for the Baseline and Assessment Periods will be published in the NOFA for each funding round.

Section 1806.202(d) clarifies that, for the purpose of reporting Qualified Activities occurring during the Baseline Period or the Assessment Period, an Applicant may only report activities on the basis of the date a final "closing" transaction occurred. The rule specifies that the evidence of such a transaction must constitute a legally binding agreement between the Applicant and a borrower or investee which, among other things, specifies the final terms and conditions of the agreement. The rule establishes some limitations on the amount of a transaction that an Applicant may claim of the purpose of calculating an award in the event of a multi-year disbursement. The rule excludes from consideration for an award loan transactions involving a renewal, rollover, or refinancing of a loan made by an Applicant or an affiliate of the Applicant in amounts that are equal to or less than the principal outstanding of such loan at the time of refinancing.

##### Estimated Award Amounts

In § 1806.203, procedures are established for calculating estimated award amounts. In general, the estimated award amount for Equity Investments, CDFI Support Activities carried out by an Applicant that is not a CDFI, and CDFI Support Activities carried out by an Applicant that is a CDFI will be equal to 15, 11 and 33 percent, respectively, of an Applicant's anticipated increase in such activities. For Development and Service Activities, a seven step procedure is established under which a total score is calculated. Generally, if the Applicant is a CDFI, the total score is multiplied by 15 percent to determine the estimated award. If the Applicant is not a CDFI, the total score is multiplied by five percent.

### Selection Process

A selection process is established in § 1806.204 which reflects the funding priorities discussed in the statute. In the event that the amount of funding requests exceeds the amount of funds available, first priority in selection will go to Applications that propose to engage in CDFI Related Activities. Of such Applicants, funding consideration will be given to Applicants in the following order: (1) Applicants proposing to make Equity Investments in CDFIs in Distressed Communities; (2) Applicants proposing to make Equity Investments in CDFIs not in Distressed Communities; and (3) Applicants proposing to engage in CDFI Support Activities. Applicants proposing to make Equity Investments in CDFIs may be ranked based on the extent to which an Applicant proposes to reduce its award below 15 percent, but in no case shall an Applicant reduce its award to less than 12 percent. Ties will be broken using the ratio of proposed Equity Investments to the asset size of the institution. Applicants proposing to engage in CDFI Support Activities will be ranked based on the ratio of the proposed CDFI Support Activity to the asset size of the Applicant. The second priority in selection will go to Applicants proposing to engage in Development and Service Activities. Applications in the last category of funding priorities may be ranked according to the ratio of an Applicant's total score to its asset size. Any ties between such Applicants will be broken using the poverty rates of the Distressed Communities.

### Actual Award Amounts

Section 1806.205 establishes the award calculation process. In general, awards will be calculated on a pro-rata basis with respect to the increase in activities actually carried out. In the event that the amount of funds available for a specific funding round are insufficient to cover all estimated award amounts, the Fund, at its sole discretion, may limit the amount of or deny an award to an Applicant that has achieved less than 75 percent of its projected activities. This provision is intended to prevent Applicants from over-estimating projected activities to enhance their competitiveness in the selection process.

### Application Process

Section 1806.206 describes the Application process for Bank Enterprise Awards. Each funding round will be preceded by a NOFA published in the Federal Register. The NOFA will

contain specific information on requirements or restrictions applicable to such round. As indicated above, the Fund has sought to minimize its application and reporting requirements and seeks comment on how these requirements might be improved.

### Subpart F—Terms and Conditions of Assistance

Section 1806.300 requires that each Awardee execute an award agreement with the Fund. The agreement will establish requirements for receiving funds and appropriate sanctions for failure to comply with Program requirements. Section 1806.301 specifies that, at the end of the Assessment Period, each Awardee will submit evidence of its completed activities. The rule clarifies the Program's documentation requirements. Upon receipt of final reports and documentation, the Fund will make the appropriate disbursement of funds to the Awardee.

### List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Savings associations.

Dated: March 4, 1997.  
Kirsten S. Moy,  
Director, Community Development Financial Institutions Fund.

For the reasons set forth in the preamble, chapter XVIII of title 12 of the Code of Federal Regulations is amended by revising part 1806 to read as follows:

## PART 1806—BANK ENTERPRISE AWARD PROGRAM

### Subpart A—General Provisions

Sec.

- 1806.100 Purpose.
- 1806.101 Summary.
- 1806.102 Relationship to the Community Development Financial Institutions Program.
- 1806.103 Definitions.
- 1806.104 Waiver authority.
- 1806.105 OMB control number.

### Subpart B—Awards

- 1806.200 Community eligibility and designation.
- 1806.201 Qualified Activities.
- 1806.202 Measuring activities.
- 1806.203 Estimated award amounts.
- 1806.204 Selection process.
- 1806.205 Actual award amounts.
- 1806.206 Applications for Bank Enterprise Awards.

### Subpart C—Terms and Conditions of Assistance

- 1806.300 Award Agreement; sanctions.
- 1806.301 Records, reports and audits of Awardees.
- 1806.302 Compliance with government requirements.
- 1806.303 Fraud, waste and abuse.
- 1806.304 Books of account, records and government access.
- 1806.305 Retention of records.

Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104-19, 108 Stat. 237 (12 U.S.C. 4703 note).

### Subpart A—General Provisions

#### § 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to encourage insured depository institutions to make Equity Investments and carry out CDFI Support Activities and Development and Service Activities to revitalize distressed urban and rural communities.

#### § 1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

- (1) Invest in or otherwise support Community Development Financial Institutions;
- (2) Increase lending and investment activities within Distressed Communities; or
- (3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

#### § 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

- (1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);
- (2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or
- (3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and CDFI Support Activities (except technical assistance) provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

#### § 1806.103 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 et seq.);

(b) *Agricultural Loan* means an origination of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;

(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(h) *Bank Enterprise Award* means an award made to an Applicant pursuant to this part;

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means an origination of a loan (other than a Multi-Family Loan or a Single Family Loan) used for commercial purposes to finance construction and land development or an origination of a loan that is secured by real estate and used to finance the acquisition or

rehabilitation of a building used for commercial purposes;

(m) *Community Development Financial Institution* (or CDFI) means an entity whose certification as a CDFI under § 1805.201 of this chapter is in effect as of the end of the applicable Assessment Period (the Assessment Period in which the Qualified Activity takes place) and that meets the requirements of § 1805.200 (b) through (h) of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (m). If an Applicant is proposing to make an Equity Investment or engage in CDFI Support Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.701(b) of this chapter. In order for the Applicant to be eligible to receive an award for its activity, the required information with respect to the uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA published in the Federal Register, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding anything in this paragraph (m) to the contrary, an Applicant may receive an award pursuant to this part for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the requirements of § 1805.200 (b) through (h) of this chapter if:

(1) The Applicant requires the uncertified CDFI to refrain from using the assistance provided until the entity is certified;

(2) The uncertified CDFI is certified by the end of the applicable Assessment Period; and

(3) The Applicant retains the option of recapturing said assistance in the event that the uncertified CDFI is not certified by the end of the applicable Assessment Period;

(n) *CDFI Related Activities* means Equity Investments and CDFI Support Activities;

(o) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that is integrally involved in a Distressed Community in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(p) *Community Services* means the following forms of assistance:

(1) Provision of technical assistance to Residents in managing their personal finances through consumer education programs (either sponsored or offered by the Applicant);

(2) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community;

(3) Provision of technical assistance to, or servicing the loans of, Low-or Moderate-Income homeowners and homeowners located in the Distressed Community; and

(4) Other services provided for Low-and Moderate-Income persons in a Distressed Community or enterprises integrally involved in a Distressed Community deemed appropriate by the Fund;

(q) *Consumer Loan* means an origination of a loan to one or more individuals for household, family, or other personal expenditures;

(r) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(s) *Development and Service Activities* means activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(t) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an Equity Investment by the Fund;

(u) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other comparable services as may be specified by the Fund that are provided to Low-and Moderate-Income persons in the Distressed Community or enterprises integrally involved with the Distressed Community;

(v) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) of the Act (12 U.S.C. 4703(a));

(w) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S.

Bureau of the Census) or other areas deemed appropriate by the Fund;

(x) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and 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;

(y) *Low-and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(z) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended;

(aa) *Multi-Family Loan* means an origination of a loan secured by a five- or more family residential property;

(bb) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is integrally involved with a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, related to commercial real estate, single family housing, multi-family housing, business or agriculture (as defined in this part);

(cc) *Qualified Activities* means CDFI Related Activities and Development and Service Activities;

(dd) *Resident* means an individual domiciled in a Distressed Community;

(ee) *Single Family Loan* means an origination of a loan secured by a one-to-four family residential property;

(ff) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any 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 directors of the corporation; and

(gg) *Unit of General Local Government* means any city, county, town,

township, parish, village, or other general purpose political subdivision of a State or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

#### § 1806.104 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 grounds forming the basis of the waiver. For a waiver in any 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.

#### § 1806.105 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 1505-0153 (expires September 30, 1998).

### Subpart B—Awards

#### § 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out CDFI Support Activities or Development and Service Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is integrally involved with such a Distressed Community. In the case of an Applicant proposing to make an Equity Investment, the Fund reserves the right to request information on Distressed Communities served by such a CDFI should such information be deemed necessary by the Fund to complete the selection process described in § 1806.204. In the case of an Applicant that proposes to carry out both CDFI Support Activities and Development and Service Activities it may designate different Distressed Communities for these two categories of activity.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the minimum area eligibility requirements contained in this paragraph (b).

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii) (A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) The area is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as published by the U.S. Bureau of the Census in the 1990 decennial census; and

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method. U.S. Bureau of Labor Statistics data and information necessary for Census Share calculations may be obtained from the Fund.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* Upon request, the Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be a Distressed Community. A prospective Applicant is encouraged to contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

#### § 1806.201 Qualified Activities.

(a) *CDFI Related Activities.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment or carrying out CDFI Support Activities during an Assessment Period.

(b) *Development and Service Activities.* (1) *General.* An Applicant may receive a Bank Enterprise Award

for carrying out Development and Service Activities during an Assessment Period.

(2) *Area served.* The Development and Service Activities listed in paragraphs (b)(4) (i) through (x) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low- and Moderate-Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Development and Service Activity is assigned a priority factor. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity.

(4) *Development and Service Activities.* Development and Service Activities are listed in this paragraph with their corresponding priority factors:

(i) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor = 1.0);

(ii) Financial Services (priority factor = 1.2);

(iii) Community Services (priority factor = 1.4);

(iv) Consumer Loans (priority factor = 1.2);

(v) Single Family Loans and related Project Investments (priority factor = 1.4);

(vi) Multi-Family Loans and related Project Investments (priority factor = 1.6);

(vii) Commercial Real Estate Loans and related Project Investments (priority factor = 1.6);

(viii) Business Loans, Agricultural Loans, and related Project Investments of \$100,000 or less (priority factor = 1.9);

(ix) Business Loans, Agricultural Loans, and related Project Investments of more than \$100,000 through \$250,000 (priority factor = 1.8);

(x) Business Loans and related Project Investments of more than \$250,000 through \$1,000,000 and Agricultural Loans and related Project Investments of more than \$250,000 through \$500,000 (priority factor = 1.7).

(c) *Limitation.* Financial assistance provided by an Applicant for which the Applicant receives benefits through the Low Income Housing Tax Credit authorized pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 42), shall not

constitute an Equity Investment, Project Investment, or other Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award.

#### § 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. If an Applicant is seeking assistance only for CDFI Related Activities, it should only report its activities for CDFI Related Activities categories. If an Applicant is seeking assistance only for Development and Service Activities, it should only report its activities for Development and Service Activities categories. If an Applicant is seeking assistance for both CDFI Related Activities and Development and Service Activities, it should report its activities for both types of categories. If an applicant is unable to report its activities in the aforementioned manner, the Applicant shall provide an explanation satisfactory to the Fund as to why it cannot report required information and simultaneously submit to the Fund a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in a Notice for each funding round.

(b) *Exception.* An Applicant may select not to report its deposit liabilities as described in § 1806.201(b)(4)(i). In such a case, an Applicant's deposit liabilities will not be considered in calculating the service score pursuant to § 1806.203(c).

(c) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans (excluding any renewal, roll over, or refinancing of a loan made by the Applicant or an affiliate of the Applicant in an amount equal to or less than the principal outstanding of such loan at the time of refinancing), grants and deposits described in § 1806.103 at the original amount of such investments, loans, grants or deposits;

(2) Deposit liabilities at the face dollar amount of monies deposited as measured by comparing the net change in the amount of applicable funds (as described in § 1806.201(b)(4)(i)) on deposit at the Applicant institution

during the period described in this paragraph (c)(2). An Applicant shall measure the net changes in deposit liabilities during:

(i) The Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(3) Financial Services, Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services; and

(4) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant.

(d) *Closed Transactions.* A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if:

(1) The documentation evidencing the transaction:

(i) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively, as specified in the applicable NOFA; and

(ii) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(2) An initial disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction, (both as determined by the Fund).

(e) *Reporting.* An Applicant shall report Qualified Activities on the basis of transactions that were:

(1) Completed during the Baseline Period; and

(2) Are expected to be completed during the Assessment Period and disbursed by the Applicant to a borrower or investee within the period described in § 1806.205(a).

#### § 1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment



will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment between the Baseline Period and Assessment Period.

(b) *CDFI Support Activities.* If an Applicant is not a CDFI, the estimated award amount for CDFI Support Activities will be equal to 11 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period. If Applicant is a CDFI, the estimated award amount for CDFI Support Activities will be equal to 33 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period.

(c) *Development and Service Activities.* The estimated award amount for Development and Service Activities will be calculated as follows:

(1) *Step 1.* For each type of Development and Service Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Development and Service Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities and Financial Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Development and Service Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score. (The Act prohibits an Applicant from receiving more assistance for its deposit taking activities than for other Qualified Activities.);

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:

(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

#### § 1806.204 Selection process.

(a) *Availability of funds.* All awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient for all

estimated award amounts, an Awardee that meets all of the program requirements specified in this part shall receive an award that is calculated in the manner specified in § 1806.205. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories.—(1) General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the priority categories described in this paragraph. All Applicants in the first priority category will be selected as Awardees before Applicants in the second priority category. Selections within each priority category will be based on the relative rankings within each such category, subject to the availability of funds.

(2) *First priority.* (i) If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities in the following order:

(A) Equity Investments in CDFIs serving Distressed Communities;

(B) Equity Investments in CDFIs not serving Distressed Communities; and

(C) CDFI Support Activities.

(ii) *Ranking Equity Investments.*

Estimated awards for Equity Investments may be ranked within each applicable priority subcategory based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). The Applicant, however, may not reduce its award percentage below 12 percent. For Applicants that propose the same percentage, estimated awards will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(iii) *Ranking CDFI Support Activities.* Estimated awards for CDFI Support Activities may be ranked based on the ratio of the proposed CDFI Support Activity to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(3) *Second priority.* (i) If the amount of funds available during a funding round is sufficient for all CDFI Related

Activities but insufficient for all estimated award amounts, second priority will go to Applicants that propose to engage in Development and Service Activities.

(ii) *Ranking Development and Service Activities.* Estimated awards for Development and Service Activities may be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

(4) *Combined awards.* If an Applicant receives an award for more than one priority category described in this section, the award amounts will be combined into a single Bank Enterprise Award.

#### § 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period and expected to be disbursed to an investee, borrower, or other recipient within three years of the end of the applicable Assessment Period. The Fund reserves the right to extend this period on a case-by-case basis where it has a high degree of confidence that disbursement will occur and the activity will promote the purposes of the Act. Subject to § 1806.204 and any recapture sanction for failure to perform pursuant to this part, the actual award amount that an Awardee shall receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Achievement.* If an Awardee carries out all or a portion of its projected Qualified Activities and satisfies all program requirements described in this part, its award amount will be calculated on a pro-rata basis to reflect the increase in activities actually carried out except that if:

(1) The amount of funds available is insufficient for all estimated award amounts; and

(2) An Applicant carries out less than 75 percent of its projected Qualified Activities, the Fund in its sole discretion, may limit the amount or deny an award.

(c) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may

use any deobligated funds or funds not obligated during a funding round:

(1) Using the calculation and selection process contained in this part:

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or

(ii) To select Applicants not previously selected;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(d) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason, including if an Awardee submits an application based on unrealistic Assessment Period projections.

#### **§ 1806.206 Applications for Bank Enterprise Awards.**

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the Federal Register. The NOFA will advise potential Applicants with respect to obtaining an application packet and will establish submission deadlines. The NOFA also will establish any other requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which includes:

(1) A copy of the Applicant's certificate of insurance issued by the Federal Deposit Insurance Corporation and a copy of the Applicant's incorporation, charter, organizing, formation, or otherwise establishing documents to be used to establish eligibility for an award;

(2) A completed Bank Enterprise Award Rating and Calculations worksheet (If an Applicant intends to complete a merger with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that represents the projected activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed.);

(3) A narrative summary of each Qualified Activity expected to be performed in the Assessment Period;

(4) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report, to its Appropriate Federal Banking Agency;

(5) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(6) Certifications that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(7) A copy of the Applicant's most recent annual report;

(8) In the case of an Applicant proposing to engage in Development and Service Activities, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

(9) In the case of an Applicant proposing to engage in CDFI Related Activities:

(i) *Equity Investment.* An Applicant shall submit:

(A) A narrative description of each CDFI in which the Applicant proposes to make an Equity Investment and a description of the amount, terms and conditions of any Equity Investment to be provided; or

(B) A list of potential CDFIs to which assistance may be provided and a description of the Applicant's investment criteria.

(ii) *CDFI Support Activities.* An Applicant shall submit:

(A) A narrative description of each CDFI to which the Applicant proposes to provide CDFI Support Activities and a description of the amount, terms and conditions of the assistance to be provided; or

(B) A list of potential CDFIs to which assistance may be provided and a description of the Applicant's lending or selection criteria; and

(C) Information that indicates that each CDFI to which a Applicant proposes to provide CDFI Support Activities is integrally involved with a Distressed Community and a map and narrative description of the Distressed Community.

#### **Subpart C—Terms and Conditions of Assistance**

##### **§ 1806.300 Award Agreement; sanctions.**

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement.

The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the Award and pursue any other available legal remedies.

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

##### **§ 1806.301 Records, reports and audits of Awardees.**

(a) At the end of an Assessment Period, each Awardee shall submit to the Fund:

(1) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(2) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period; and

(3) *Documentation.* The Applicant shall make available the following:

(i) With respect to Equity Investments and CDFI Support Activities, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(ii) With respect to Development and Services Activities where the original amount of the value of the activity is \$250,000 or greater, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(iii) With respect to Development and Services Activities where the original amount of the value of the activity is less than \$250,000, the Applicant shall submit a schedule that describes the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument; and

(iv) Any other information reasonably requested by the Fund in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

**§ 1806.302 Compliance with government requirements.**

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

**§ 1806.303 Fraud, waste and abuse.**

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance

provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

**§ 1806.304 Books of account, records and government access.**

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have

full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

**§ 1806.305 Retention of records.**

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

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