

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

RIN 1505-AA91

Bank Enterprise Award Program

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

ACTION: Interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing an interim rule implementing the Bank Enterprise Award (BEA) Program administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within Distressed Communities and provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. This interim rule: amends and simplifies select application requirements, and adds the requirement that BEA award funds be used for BEA Qualified Activities.

DATES: Interim rule effective January 30, 2009; comments must be received on or before March 2, 2009.

ADDRESSES: You may send hard copy comments concerning this interim rule to the Depository Institutions Program Advisor, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. You may also send us comments by e-mail to cdfihelp@cdfi.treas.gov, with the subject heading "BEA Program Comments". When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at <http://www.cdfifund.gov>.

FOR FURTHER INFORMATION CONTACT:

Jodie Harris, Depository Institutions Program Advisor, Community Development Financial Institutions Fund, at (202) 622-4499. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:**I. Background**

Through the Bank Enterprise Award (BEA) Program, the Community Development Financial Institutions Fund (the Fund) seeks to: strengthen and expand the financial and organizational capacity of CDFIs; provide financial incentives to insured depository institutions to increase their lending and services in Distressed Communities; and increase the flow of private capital into Low- and Moderate-Income areas. Applicants participate in the BEA Program through a competitive process, which evaluates applications based on the value of their increases in certain Qualified Activities. BEA Program Awardees receive award proceeds only after successful completion of the specified Qualified Activities. On February 4, 2003, the Fund published in the **Federal Register** an interim regulation (62 FR 64439) implementing the BEA Program (the current rule).

II. Summary of Changes

Revised Definitions for Categories of Qualified Activities: The interim rule updates the definition of Affordable Housing Development Loans (§ 1806.103(b)); Affordable Housing Loans (§ 1806.103(c)), and Home Improvement Loans (§ 1806.103(ee)); Commercial Real Estate Loans (§ 1806.103(l)); and Small Business Loans (§ 1806.103(o)) to include the requirement that the borrower and/or entity financed be located in a Distressed Community (§ 1806.103(t)). Affordable Housing Development Loans are loans related to the development of residential real property that are affordable to Low- and Moderate-Income Eligible Residents. Affordable Housing Loan means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income individual and an Eligible Resident. Home Improvement Loans mean advances of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence where the borrower is an Eligible Resident. Commercial Real Estate Loans are loans secured by real estate and used to finance the acquisition or rehabilitation

of a building in a Distressed Community, or the acquisition, construction and or development of property in a Distressed Community, used for commercial purposes. Small Business Loan means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Finance Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) and is located in a Distressed Community.

Award Agreement; Sanctions: Section 1806.300(a) of the interim rule provides that a BEA Program Award recipient shall comply with performance goals that have been established by the Fund. Such performance goals will include the requirement that an Awardee use its BEA Program Award for Qualified Activities under the BEA Program.

III. Rulemaking Analysis*Executive Order (E.O.) 12866*

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

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

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559-0005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change. Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of

Information and Regulatory Affairs, Washington, DC 20503.

National Environmental Policy Act

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

Administrative Procedure Act

The Fund is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553, because the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA pursuant to 5 U.S.C. 553(a)(2). The Fund also believes that an immediate effective date is necessary for the convenience of the persons affected. Specifically, an immediate effective date will minimize the risk of confusion on the affected community by ensuring that there will be a single and uniform regulation in effect during the Assessment Period for the upcoming round of the BEA Program.

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

Catalog of Federal Financial Assistance Number

Bank Enterprise Award Program—21.021.

List of Subjects in 12 CFR Part 1806

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

■ For the reasons set forth in the preamble, 12 CFR Part 1806 is revised to read as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Sec.

Subpart A—General Provisions

- 1806.100 Purpose.
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- 1806.102 Relationship to other Community Development Financial Institutions Programs.
- 1806.103 Definitions.
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- 1806.200 Community eligibility and designation.
- 1806.201 Measuring and reporting Qualified Activities.
- 1806.202 Estimated award amounts.
- 1806.203 Selection Process, actual award amounts.
- 1806.204 Applications for Bank Enterprise Awards.

Subpart C—Terms and Conditions of Assistance

- 1806.300 Award Agreement; sanctions.
- 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. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to provide financial assistance to Community Development Financial Institutions, and provide an incentive for insured depository institutions to increase their activities in Distressed Communities.

§ 1806.101 Summary.

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

- (1) Increase their investments in or other support of 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 geographic, poverty and unemployment criteria.

(c) 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 and must be used for BEA Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to other Community Development Financial Institutions Programs.

Prohibition against double funding. A BEA Applicant may not submit as Qualified Activities any transactions funded with award proceeds from another Fund program.

§ 1806.103 Definitions.

For purposes of this part the following terms shall have the following definitions:

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

(b) *Affordable Housing Development Loan* means origination of a loan to finance the acquisition, construction, and/or development of single- or multi-family residential real property, where at least sixty percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Low- and Moderate-Income Eligible Residents.

(c) *Affordable Housing Loan* means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income Eligible Resident. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or "soft second" mortgages, and other similar types of down payment assistance loans but may not necessarily be secured by such property originated for the purpose of facilitating the purchase or improvement of the borrower's primary residence, where such borrower is a Low- and Moderate-Income Eligible Resident.

(d) *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;

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

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

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

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

(i) *Bank Enterprise Award (or BEA Program Award)* means an award made to an Applicant pursuant to this part;

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

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

(l) *Commercial Real Estate Loan* means an origination of a loan (other than an Affordable Housing Development Loan or Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and/or development of property in a Distressed Community, used for commercial purposes;

(m) *Community Development Entity (or CDE)* means any Qualified Community Development Entity that meets the requirements set forth at Internal Revenue Code (IRC) § 45D(c) and that has been certified as such by the Fund;

(n) *Community Development Financial Institution (or CDFI)* means an entity that has been certified as a CDFI by the CDFI Fund as of the date specified in the applicable NOFA.

(o) *Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of technical assistance and financial education to Eligible Residents regarding managing their personal finances;

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

(3) Provision of technical assistance and financial education to, or servicing the loans of, Low- or Moderate-Income homeowners and homeowners that are Eligible Residents; and

(4) Other services provided to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in a Distressed Community, as deemed appropriate by the Fund;

(p) *CDFI Partner* means a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant;

(q) *CDFI Related Activities* means Equity Investments, Equity-Like Loans and CDFI Support Activities;

(r) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the Fund in the applicable NOFA, 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;

(s) *Deposit Liabilities* means time or savings deposits or demand deposits, accepted from Eligible Residents at offices of the Applicant, or a Subsidiary of the Applicant, located within the Distressed Community. Depository Liabilities may only include deposits held by individuals in transaction accounts (*i.e.*, demand deposits, NOW accounts, automated transfer service accounts and telephone or preauthorized transfer accounts) or non-transaction accounts (*i.e.*, money market deposit accounts, other savings deposits and all time deposits), as defined by the Appropriate Federal Banking Agency;

(t) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200, and such additional criteria as may be set forth in the applicable NOFA;

(u) *Distressed Community Financing Activities* means Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; and Small Business Loans and related Project Investments;

(v) *Education Loan* means an advance of funds to a student, who is an Eligible Resident, for the purpose of financing a college or vocational education.

(w) *Electronic Transfer Account (or ETA)* means an account meeting the requirements, and with respect to which the Applicant has satisfied the requirements, set forth in the **Federal Register** on July 16, 1999 at 64 FR 38510, as such requirements may be amended from time to time;

(x) *Eligible Resident* means an individual that resides in a Distressed Community;

(y) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the Fund;

(z) *Equity-Like Loan* means a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment which meets such criteria as set forth in the applicable NOFA;

(aa) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller

machines, safe deposit boxes, new branches, and other comparable services as may be specified by the Fund in the applicable NOFA, that are provided by the Applicant to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in the Distressed Community;

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

(cc) *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;

(dd) *Home Improvement Loan* means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence;

(ee) *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;

(ff) *Individual Development Account (or IDA)* means an account that meets the requirements, and with respect to the provision of which Applicant has satisfied the requirements, set forth in the U.S. Department of Health and Human Services Program Announcement OCS-2000-04, published on December 14, 1999 in the **Federal Register** at 64 FR 69824, as such requirements may be amended from time to time;

(gg) *Integrally Involved* means:

(i) For a CDFI Partner, having provided or transacted the percentage of financial transactions or dollars (*e.g.*, loans or equity investments as defined in 12 CFR 1805.104(s)), or Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, or having attained the percentage of market share for a particular product in a Distressed Community, set forth in the applicable NOFA; or

(ii) For a non-CDFI, having directed the percentage of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to

servicing the Distressed Community identified by the Applicant, or having provided the percentage of its business activities in said Distressed Community, set forth in the applicable NOFA.

(hh) *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));

(ii) *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;

(jj) *Notice of Funds Availability (or NOFA)* means the public notice, published by the Fund in the **Federal Register**, that announces the availability of BEA Program funds for a particular funding round and that advises Applicants with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round;

(kk) *Priority Factor* means a numeric value assigned to each type of activity within each category of Qualified Activity, as may be established by the Fund in the applicable NOFA. 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;

(ll) *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 in a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans;

(mm) *Qualified Activities* means CDFI Related Activities, Distressed Community Financing Activities, and Service Activities;

(nn) *Service Activities* means the following activities: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products;

(oo) *Small Business Loan* means an origination of a loan used for

commercial or industrial activities (other than an Affordable Housing Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) and is located in a Distressed Community;

(pp) *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;

(qq) *Targeted Financial Services* means ETAs, IDAs, and such other similar banking products as maybe specified by the Fund in the applicable NOFA;

(rr) *Targeted Retail Savings/Investment Products* means certificates of deposit, mutual funds, life insurance and other similar savings or investment vehicles targeted to Low- and Moderate-Income Eligible Residents, as may be specified by the Fund in the applicable NOFA; and

(ss) *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 will 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 1559-0005.

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General*. If an Applicant proposes to carry out Service Activities or Distressed Community Financing Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. The Applicant may designate different Distressed Communities for each category of activity. 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 in a Distressed Community as specified in the applicable NOFA.

(b) *Minimum area and eligibility requirements*. A Distressed Community must meet the following minimum area and eligibility requirements:

(1) Minimum area requirements. A Distressed Community:

(i) Must be an area that is located within the jurisdiction of one (1) Unit of General Local Government;

(ii) The boundaries the area must be contiguous; and

(iii) The area must:

(A) Have a population, as determined by the most recent census data available, of not less than 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; or

(B) Have a population, as determined by the most recent census data available, of not less than 1,000 in any other case; or

(C) Be located entirely within an Indian Reservation.

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

(i) At least 30 percent of the Eligible Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census in the most recent decennial census for which data is available;

(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; and

(iii) Such additional requirements as may be specified by the Fund in the applicable NOFA.

(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 set forth in paragraph (b) of this section; 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.* The Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

§ 1806.201 Measuring and reporting Qualified Activities.

(a) *General.* An Applicant may receive a Bank Enterprise Award for engaging in any of the following categories of Qualified Activities during an Assessment Period: CDFI Related Activities, Distressed Community Financing Activities, or Service Activities. The Fund may further qualify such Qualified Activities in the applicable NOFA, including such additional geographic and transaction size limitations as the Fund deems appropriate.

(b) *Reporting Qualified Activities.* An Applicant should report only its Qualified Activities for the category in which it is seeking a Bank Enterprise Award. For example, if an Applicant is seeking a Bank Enterprise Award for Distressed Community Financing Activities only, it should report only its activities for the Distressed Community Financing Activities category.

(1) If an Applicant elects to apply for an award in either the CDFI Related Activities category or the Distressed Community Financing Activities category, it must report on all types of activity within that category unless the Applicant can provide a reasonable explanation acceptable to the Fund, in its sole discretion, as to why it cannot report on all activities in such category.

(2) If an Applicant elects to apply for an award in the Service Activities category, it may elect not to report each type of activity within the Service Activities category.

(c) *Area served.* CDFI Related Activities must be provided to a CDFI Partner Integrally Involved in a Distressed Community. Service Activities and Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(1) Undertaken in the Distressed Community; or

(2) Provided to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in the Distressed Community.

(d) *Certain Limitations on Qualified Activities*—Activities funded with the proceeds of Federal funding or tax credit programs may be ineligible for purposes of calculating or receiving a Bank Enterprise Awards. Please see the applicable BEA NOFA for current limitations on Qualified Activities.

(e) *Measuring the Value of Qualified Activities.* Subject to such additional or alternative valuations as the Fund may specify in the applicable NOFA, the Fund will assess the value of:

(1) Equity Investments, Equity-Like Loans, loans, grants and certificates of deposits, at the original amount of such Equity Investments, Equity-Like Loans, loans, grants or certificates of deposits. Where a certificate of deposit matures and is then rolled over during the Baseline Period or the Assessment Period, as applicable, the Fund will assess the value of the full amount of the rolled over deposit. Where an existing loan is refinanced (a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

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

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described below:

(i) The Applicant shall calculate the net change in deposits during 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 Applicant shall calculate the net change in such deposits during 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;

(4) Financial Services and Targeted Financial Services based on the predetermined amounts as may be set forth by the Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the Fund has established a predetermined value), Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services.

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

(1) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively; and

(2) 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

(3) An initial cash 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 (as determined by the Fund) unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the Fund.

(g) *Reporting Period.* An Applicant may only measure the amount of a Qualified Activity that it reasonably expects to disburse to an investee, borrower, or other recipient within one year of the end of the applicable Assessment Period, or such other period as may be set forth by the Fund in the applicable NOFA.

§ 1806.202 Estimated award amounts.

(a) *General.* An Applicant shall calculate and submit to the Fund an estimated award amount as part of the Bank Enterprise Award application.

(b) *Award Percentages.* The Fund will establish the award percentage for each category of Qualified Activities in the applicable NOFA. Applicable award percentages for activities undertaken by Applicants that are CDFIs will be equal to three times the award percentages for activities undertaken by Applicants that are not CDFIs.

(c) *Calculating the estimated award amount.* The estimated award amount for each category of Qualified Activities will be equal to the applicable award percentage of the increase in the weighted value of such Qualified Activities between the Baseline Period and Assessment Period. The weighted

value of the applicable Qualified Activities shall be calculated by:

(1) Subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a remainder; and

(2) Multiplying the remainder by the applicable Priority Factor (as set forth in the applicable NOFA).

(d) *Estimated Award Eligibility Review.* The Fund will determine the eligibility of each transaction for which an Applicant has applied for a Bank Enterprise Award. Based upon this review, the Fund will calculate the actual award amount for which such Applicant is eligible.

§ 1806.203 Selection Process, actual award amounts.

(a) *Sufficient Funds Available to Cover Estimated Awards.* All Bank Enterprise Awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, and an Applicant meets all of the program requirements specified in this part, then such Applicant shall receive an actual award amount that is calculated by the Fund in the manner specified in § 1806.202.

(b) *Insufficient Funds Available to Cover Estimated Awards.* If the amount of funds available during a funding round is insufficient to cover all estimated award amounts for which Applicants are eligible, in the Fund's determination, then the Fund will select Awardees and determine actual award amounts based on the process described in this section.

(c) *Priority of Awards.* The Fund will rank Applicants in each category of Qualified Activity according to the priorities described in this paragraph (c). Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds.

(1) First priority. 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, ranked in the order set forth in the applicable NOFA.

(2) Second priority. If the amount of funds available during a funding round is sufficient for all Applicants that propose to engage in CDFI Related Activities but insufficient for all remaining estimated award amounts, second priority will be given to Applicants that propose to engage in

Distressed Community Financing Activities, ranked in the order set forth in the applicable NOFA.

(3) Third Priority. If the amount of funds available during a funding round is sufficient for all Applicants that propose to engage in CDFI Related Activities and Distressed Community Financing Activities, but insufficient for all remaining estimated award amounts, third priority will be given to Applicants that propose to engage in Service Activities, ranked in the order set forth in the applicable NOFA.

(d) *Calculating actual award amounts.* The Fund will determine actual award amounts based upon the availability of funds, increases in Qualified Activities from the Baseline to the Assessment Period, and an Applicant's priority ranking. If an Applicant receives an award for more than one priority category described in this section, the Fund will combine the award amounts into a single Bank Enterprise Award.

(e) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) To select Applicants not previously selected, using the calculation and selection process contained in this part;

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

(3) As otherwise authorized by the Act.

(f) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason.

§ 1806.204 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability; Applications.* Applicants shall submit applications for Bank Enterprise Awards in accordance with this section and the applicable NOFA. After receipt of an application, the Fund may request clarifying or technical information related to materials submitted as part of such application or to verify that Qualified Activities were carried out in the manner prescribed in this part.

(b) *Application contents.* An application for a Bank Enterprise Award shall contain:

(1) A completed worksheet that reports the increases in Qualified Activities actually carried out during the Baseline and Assessment Period. If an Applicant has merged 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 reports the 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;

(2) A report of Qualified Activities that were closed during the Assessment Period. Such report shall describe the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument;

(3) With respect to all CDFI Related Activities and Distressed Community Financing Activities where the amount of the Qualified Activity is \$250,000 or greater, documentation that meets the conditions described in § 1806.201(f);

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

(5) Certifications, as described in the applicable NOFA and Bank Enterprise Award application, that the information provided to the Fund is true and accurate and 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;

(6) In the case of an Applicant proposing to engage in Service Activities, or Distressed Community Financing Activities, an Applicant must submit a Distressed Community map and other documentation as described in the applicable NOFA and Bank Enterprise Award application;

(7) Information that indicates that each CDFI to which an Applicant has provided CDFI Support Activities is Integrally Involved in a Distressed Community as described in the applicable NOFA and Bank Enterprise Award application; and

(8) Any other information requested by the Fund, or specified by the Fund in the applicable NOFA or the Bank Enterprise Award application, in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

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.

(4) Comply with performance goals that have been established by the Fund. Such performance goals will include measures that require an Awardee to use its BEA Program Award funds for Qualified Activities.

(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, bar the Awardee and/or its Affiliates from applying for an award from the Fund for a period to be decided by the Fund in its sole discretion, and pursue any other available legal remedies.

(c) *Compliance with Other CDFI Fund Awards.* In the event that an Awardee or its Subsidiary or Affiliate is not in compliance, as determined by the Fund, with the terms and conditions of any other award under the Bank Enterprise Award Program or any component of the Community Development Financial Institutions Program, the Fund may, in its sole discretion, reject an application for or withhold disbursement (either

initial or subsequent) on a Bank Enterprise Award.

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

§ 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.

Dated: January 15, 2009.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

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