

# Rules and Regulations

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## 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 public comment.

**SUMMARY:** The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award Program (BEA Program), administered by the Community Development Financial Institutions Fund (CDFI Fund). This revised interim rule reflects the CDFI Fund's programmatic decision to create two subcategories within the Distressed Community Financing Activities category of Qualified Activities in order to differentiate between: Consumer Loans and Commercial Loans and Investments. This revised interim rule includes revisions necessary to implement this modification to the Distressed Community Financing Activities category, as well as to make certain technical corrections and other updates to the current rule.

**DATES:** Effective date: August 10, 2016. All comments must be written and must be received in the offices of the CDFI Fund on or before October 11, 2016.

**ADDRESSES:** You may submit comments concerning this revised interim rule via the Federal e-Rulemaking Portal at <http://www.regulations.gov> (please follow the instructions for submitting comments). All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Other information regarding the CDFI Fund and its

programs may be obtained through the CDFI Fund's Web site at <http://www.cdfifund.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Robert Ibanez, BEA Program Manager, Community Development Financial Institutions Fund, at [bea@cdfi.treas.gov](mailto:bea@cdfi.treas.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The CDFI Fund, Department of the Treasury, was authorized by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*) (the Act). The mission of the CDFI Fund is to expand economic opportunity for underserved people and communities by supporting the growth and capacity of a national network of community development lenders, investors, and financial service providers. Its vision is an America in which all people and communities have access to the investment capital and financial services they need to prosper. The BEA Program provides awards to depository institutions, insured by the Federal Deposit Insurance Corporation (FDIC), that demonstrate an increase in their activities in the form of loans, investments, services, and Technical Assistance, in 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.

Through the BEA Program, the CDFI Fund seeks to: strengthen and expand the financial and organizational capacity of CDFIs; provide monetary awards to insured depository institutions that increase their lending and financial 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 application process in which the CDFI Fund evaluates Applicants based on the value of their increases in certain Qualified Activities. BEA Program award Recipients receive award proceeds in the form of a grant after successful completion of specified Qualified Activities.

The CDFI Fund has determined that, under the current rule, Applicants may be disproportionately incentivized to engage in commercial lending activities

under the Distressed Community Financing Activity category. Increases in lending for commercial purposes have consistently been reported at higher levels in BEA Program applications than lending to residents of Distressed Communities, likely due to the larger average size of commercial versus consumer transactions, which makes Applicants potentially eligible for larger BEA Program awards.

Currently, the Distressed Community Financing Activity category of Qualified Activities consists of seven individual activity-types (Affordable Housing Loans, Small Dollar Consumer Loans, Home Improvement Loans, Education Loans, Affordable Housing Development Loans, Small Business Loans, and Commercial Real Estate Loans). Under the current rule, Applicants report at the activity-type level for Distressed Community Financing Activities, and may choose to report lending for only those activity types within the category that had an increase. This disaggregated method of reporting often does not provide a complete and accurate reflection of the Applicant's net increase in lending to businesses and residents in Distressed Communities, as intended by the Act, because an Applicant's lending typically reflects multiple activity types. This revised interim rule creates two subcategories within the Distressed Community Financing Activities category in order to differentiate between: (1) *Consumer Loans* and (2) *Commercial Loans and Investments*. *Consumer Loans* consist of: Affordable Housing Loans, Small Dollar Consumer Loans, Home Improvement Loans, and Education Loans.

*Commercial Loans and Investments* consist of: Affordable Housing Development Loans, Small Business Loans, and Commercial Real Estate Loans. Applicants will be required to aggregate Baseline Period and Assessment Period amounts at the subcategory levels. In order to substantiate the aggregate amounts reported, Applicants will continue to be required to submit individual transactions at the activity-type level. This regulatory change seeks to increase incentives for Applicants' lending to consumers in Distressed Communities and to ensure that Applicants provide complete and accurate information regarding their Distressed Community Financing Activities.

On May 5, 2015, the CDFI Fund published in the **Federal Register** an interim rule (80 FR 25581) implementing the BEA Program. The deadline for submission of comments was July 3, 2015.

## **II. Comments on the May 5, 2015, Interim Rule**

As of the close of the July 3, 2015 comment period, the CDFI Fund received no comments on the current rule.

## **III. Summary of Changes**

*A. Subpart A:* In subpart A, § 1806.103, Definitions, various changes and updates were made to the defined terms in the rule. Throughout the revised interim rule, the defined term “Qualified Activity” has been replaced by “Eligible Activity” in those instances where the intention is to define authorized uses of BEA Program awards by Recipients as opposed to defining Qualified Activities that are completed and reported by Applicants seeking to receive awards. This change will provide greater clarity to Applicants regarding the requirements to receive and use BEA Program awards.

The term “CDFI Support Activity” is revised in § 1806.103 to remove the specific criteria for “deposits” as such criteria will now be specified in the applicable NOFA. This will allow the CDFI Fund greater flexibility in adapting these criteria to market changes. New definitions have been added in § 1806.103 for “Commercial Loans and Investments” and “Consumer Loans,” the two new subcategories under the Distressed Community Financing Activities category. The term “Community Services” has been revised to allow the CDFI Fund the discretion to specify activities that are comparable to Community Services in the applicable NOFA. This will allow the CDFI Fund greater flexibility to adapt this listing to reflect developments in banking community activities. The term “Development Service Activities” has been revised to allow the CDFI Fund the discretion to specify any activities that are comparable to Development Service Activities in the applicable NOFA, again providing greater flexibility for the CDFI Fund to adapt to market developments.

In order to better align the defined individual beneficiaries of various Qualified and Eligible Activities with BEA Program goals, the CDFI Fund in this revised interim rule has clarified where such beneficiaries must be Eligible Residents and where they must be Eligible Residents that also meet BEA Program Low- and Moderate-Income requirements. “Education Loan” is

revised in § 1806.103 to ensure that the borrower is an Eligible Resident who meets Low- and Moderate-Income requirements. “Financial Services” is revised in § 1806.103 to remove the requirement that an Eligible Resident receiving such services must also meet Low- and Moderate-Income requirements. “Individual Development Account” has been revised in § 1806.103 to clarify that holders of such accounts must be Eligible Residents who meet Low- and Moderate-Income requirements. The term “Small Dollar Consumer Loan” has been revised in § 1806.103 to ensure that the borrower is an Eligible Resident who meets Low- and Moderate-Income requirements. The term “Targeted Financial Services” is revised in § 1806.103 to remove the requirement that an Eligible Resident receiving such services must also meet Low- and Moderate-Income requirements. “Targeted Retail Savings/Investment Products” has been revised in § 1806.103 to remove the requirement that such products be targeted to an Eligible Resident who also meets Low- and Moderate-Income requirements. “Low- and Moderate-Income” is revised in § 1806.103 to better align with the CDFI Fund’s definition of the term across its other programs. The term “Priority Factor” has been revised in § 1806.103 to incorporate the newly-designated subcategories under Distressed Community Financing Activities.

*B. Subpart C:* The title of subpart C has been revised to “Use of Funds/ Eligible Activities.”

*C. Subpart D:* In subpart D, § 1806.401(a), minor revisions have been made in order to clarify that the section references Qualified Activities conducted by an Applicant prior to award rather than future activities proposed by an Applicant. Section 1806.402(b) has been revised to implement the two new subcategories under the Distressed Community Financing Activities category—Consumer Loans or Commercial Loans and Investments. Under the revised language, if an Applicant chooses to report transactions on any single activity type in either subcategory, the Applicant must report its overall increase on all activity types within that subcategory. Section 1806.402(c) has been revised to remove the requirement that when activities serving a Distressed Community are provided to an Eligible Resident, the resident must also meet Low- and Moderate-Income requirements. Section 1806.403(c) has been revised to provide a basic formula for calculating the estimated award amount for Qualified Activities.

Section 1806.405(b) has been revised to reflect the transition from paper to electronic submission of certain application components. This section has also been revised in 1806.405(b)(6)(ii) to remove a redundant reference to “Eligible Residents that resided in a Distressed Community,” where the definition of Eligible Residents already requires that they reside in a Distressed Community.

## **IV. Rulemaking Analysis**

### *A. Executive Order (E.O.) 12866*

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

### *B. Regulatory Flexibility Act*

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

### *C. Paperwork Reduction Act*

The collections of information contained in this revised interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned the applicable OMB Control Number associated with the CDFI Fund under 1559. 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. The revised interim rule imposes collections of new information, for which the CDFI Fund has OMB approval.

### *D. National Environmental Policy Act*

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

### *E. Administrative Procedure Act*

Because the revisions to this revised interim rule relate to grants, notice and

public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

#### F. Comment

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

#### G. Catalog of Federal Domestic 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

#### Subpart A—General Provisions

- 1806.100 Purpose.
- 1806.101 Summary.
- 1806.102 Relationship to other CDFI Fund programs.
- 1806.103 Definitions.
- 1806.104 Uniform Administrative Requirements; waiver authority.
- 1806.105 OMB control number.

#### Subpart B—Eligibility

- 1806.200 Applicant eligibility.

#### Subpart C—Use of Funds/Eligible Activities

- 1806.300 Eligible Activities.
- 1806.301 Restrictions on use of award.

#### Subpart D—Award Determinations

- 1806.400 General.
- 1806.401 Community eligibility and designation.
- 1806.402 Measuring and reporting Qualified Activities.
- 1806.403 Estimated award amounts.
- 1806.404 Selection process; actual award amounts.
- 1806.405 Applications for BEA Program Awards.

#### Subpart E—Terms and Conditions of Assistance

- 1806.500 Award Agreement; sanctions.
- 1806.501 Compliance with government requirements.
- 1806.502 Fraud, waste, and abuse.
- 1806.503 Books of account, records, and government access.
- 1806.504 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 (BEA) Program is to provide grants to Insured Depository Institutions that provide financial and technical assistance to Community Development Financial Institutions and increase their activities in Distressed Communities.

##### § 1806.101 Summary.

Through the BEA Program, the CDFI Fund will provide monetary awards in the form of grants to Applicants selected by the CDFI Fund that increase their investments in or provide other support of CDFIs, increase their lending and investment activities in Distressed Communities, or increase their provision of certain services and assistance. Distressed Communities must meet minimum geographic, poverty, and unemployment criteria. Applicants are selected to receive BEA Program Awards through a merit-based, competitive application process. The amount of a BEA Program Award is based on the increase in Qualified Activities that are carried out by the Applicant during the Assessment Period. BEA Program Awards are disbursed by the CDFI Fund after the Recipient has successfully completed projected Qualified Activities. Each Recipient will enter into an Award Agreement, which will require it to abide by terms and conditions pertinent to any assistance received under this part, including the requirement that BEA Program Award proceeds must be used for Eligible Activities, and in accordance with the Uniform Administrative Requirements, as applicable. All BEA Program Awards are made subject to funding availability.

##### § 1806.102 Relationship to other CDFI Fund programs.

(a) *Restrictions using BEA Program Award in conjunction with other awards.* (1) Restrictions are in place on applying for, receiving, and using BEA Program Awards in conjunction with awards under other programs administered by the CDFI Fund.

(2) Other programs include, but not limited to, the Capital Magnet Fund, the CDFI Program, the CDFI Bond Guarantee Program, the Native American CDFI Assistance Program, and the New Markets Tax Credit Program, are as set forth in the applicable notice of funding opportunity or Notice of Allocation Availability.

(b) *Prohibition against double funding.* (1) Qualified Activities may not include transactions funded in whole or in part with award proceeds

from another CDFI Fund program or Federal program.

(2) An Applicant that is a CDFI may not receive a BEA Program Award, either directly or through a community partnership if it has:

(i) Received a CDFI Program award within the preceding 12-month period, or has a CDFI Program application pending; or

(ii) Ever received a CDFI Program award based on the same activity during the same semiannual period for which the institution seeks a BEA Program Award.

##### § 1806.103 Definitions.

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

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

*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 60 percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Eligible Residents who meet Low- and Moderate-Income requirements;

*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 an Eligible Resident who meets Low- and Moderate-Income requirements. 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 an Eligible Resident who meets Low- and Moderate-Income requirements;

*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;

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

*Assessment Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant will carry out, or has carried out, Qualified Activities;

*Award Agreement* means a formal agreement between the CDFI Fund and a Recipient pursuant to § 1806.500;

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

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

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

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

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

*CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the CDFI Fund in the applicable NOFA and that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, Technical Assistance, or deposits, as further specified in the applicable NOFA;

*Commercial Loans and Investments* means the following lending activity types: Affordable Housing Development Loans and related Project Investments; Small Business Loans and related Project Investments; and Commercial Real Estate Loans and related Project Investments;

*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;

*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;

*Community Development Financial Institutions Fund (or CDFI Fund)* means the Community Development Financial Institutions Fund established pursuant to section 104(a)(12 U.S.C. 4703(a)) of the Act;

*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, homeowners who are Eligible Residents and meet Low- and Moderate-Income requirements; and

(4) Other services provided to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in a Distressed Community, as deemed appropriate by the CDFI Fund, and other comparable services as may be specified by the CDFI Fund in the applicable NOFA;

*Consumer Loans* means the following lending activity types: Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans;

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

*Development Service Activities* means activities that promote community development and are integral to the Applicant's provision of financial products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the financial products or Financial Services of the Applicant. Development Service Activities include financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, financial management skills, and other comparable services as may be specified by the CDFI Fund in the applicable NOFA.

*Distressed Community* means a geographically defined community that meets the minimum area eligibility

requirements specified in § 1806.401 and such additional criteria as may be set forth in the applicable NOFA;

*Distressed Community Financing Activities* means:

- (1) Consumer Loans; or
- (2) Commercial Loans and Investments;

*Education Loan* means an advance of funds to a student who is an Eligible Resident who meets Low- and Moderate-Income requirements for the purpose of financing a college or vocational education;

*Electronic Transfer Account (or ETA)* means an account that meets the following requirements, and with respect to which the Applicant has satisfied the requirements:

(1) Be an individually owned account at a Federally insured financial institution;

(2) Be available to any individual who receives a Federal benefit, wage, salary, or retirement payment;

(3) Accept electronic Federal benefit, wage, salary, and retirement payments and such other deposits as a financial institution agrees to permit;

(4) Be subject to a maximum price of \$3.00 per month;

(5) Have a minimum of four cash withdrawals and four balance inquiries per month, to be included in the monthly fee, through:

(i) The financial institution's proprietary (on-us) automated teller machines (ATMs);

(ii) Over-the-counter transactions at the main office or a branch of the financial institution; or

(iii) Any combination of on-us ATM access and over-the-counter access at the option of the financial institution;

(6) Provide the same consumer protections that are available to other account holders at the financial institution, including, for accounts that provide electronic access, Regulation E (12 CFR part 205) protections regarding disclosure, limitations on liability, procedures for reporting lost or stolen cards, and procedures for error resolution;

(7) For financial institutions that are members of an on-line point-of-sale (POS) network, allow on-line POS purchases, cash withdrawals, and cash back with purchases at no additional charge by the financial institution offering the ETA;

(8) Require no minimum balance, except as required by Federal or State law;

(9) At the option of the financial institution, be either an interest-bearing or a non-interest-bearing account; and

(10) Provide a monthly statement.

*Eligible Activities* means CDFI Related Activities, Distressed Community

**Financing Activities, and Service Activities, and as further described in the applicable NOFA and the Award Agreement;**

*Eligible Resident* means an individual who resides in a Distressed Community;

*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 CDFI Fund;

*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 that meets such criteria as set forth in the applicable NOFA;

*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 CDFI Fund in the applicable NOFA, that are provided by the Applicant to Eligible Residents or enterprises that are Integrally Involved in the Distressed Community;

*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 Indian Areas or Native American Areas (as each is defined by the U.S. Bureau of the Census), or other areas deemed appropriate by the CDFI Fund;

*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, where such borrower is an Eligible Resident who meets Low- and Moderate-Income requirements;

*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;

*Individual Development Account* (or *IDA*) means a special savings account that matches the deposits of Eligible

Residents who meet Low- and Moderate-Income requirements individuals and that enables such individuals to save money for a particular financial goal including, but not limited to, and as determined by the CDFI Fund: buying a home, paying for post-secondary education, or starting or expanding a small business;

*Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

*Integrally Involved* means, for a CDFI Partner, having provided or transacted the percentage of financial transactions or dollars (*i.e.*, loans or Equity Investments), 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;

*Low- and Moderate-Income or Low-and Moderate-Income requirements* means borrower income that does not exceed 80 percent of the median income of the area involved, according to the U.S. Census Bureau data, set forth in the Applicable NOFA;

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

*Notice of Funding Availability* (or *NOFA*) means the public notice of funding opportunity that announces the availability of BEA Program Award funds for a particular funding round and that advises prospective Applicants with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round;

*Priority Factor* means a numeric value assigned to the following, as established by the CDFI Fund in the applicable NOFA:

(1) Each subcategory within the Distressed Community Financing Activities category of Qualified Activities; or

(2) Each activity-type within the Service Activities and CDFI Related Activities categories of Qualified Activities.

(3) A priority factor represents the CDFI 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;

*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 CDFI Fund), including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans;

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

*Recipient* means an Applicant that receives a BEA Program Award pursuant to this part and the applicable NOFA;

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

*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;

*Small Dollar Consumer Loan* means affordable consumer lending products that serve as available alternatives in the marketplace for individuals who are Eligible Residents who meet Low- and Moderate-Income requirements and meet criteria further specified in the applicable NOFA;

*State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands;

*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;

*Targeted Financial Services* means ETAs, IDAs, and such other banking products targeted to Eligible Residents,

as may be specified by the CDFI Fund in the applicable NOFA;

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

*Technical Assistance* means the provision of consulting services, resources, training, and other nonmonetary support relating to an organization, individual, or operation of a trade or business, as may be specified by the CDFI Fund in the applicable NOFA; and

*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 Uniform Administrative Requirements; waiver authority.**

(a) *Uniform Administrative Requirements.* The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Administrative Requirements), codified by the Department of the Treasury at 2 CFR part 1000, apply to awards, regardless of type of award Recipient, made pursuant to this part.

(b) *Waiver authority.* The CDFI 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 CDFI 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 CDFI Fund will publish notification of granted waivers in the **Federal Register**.

#### **§ 1806.105 OMB control number.**

The collections of information contained in this part have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned the applicable, approved OMB Control Numbers associated with the CDFI Fund under 1559.

### **Subpart B—Eligibility**

#### **§ 1806.200 Applicant eligibility.**

An entity that is an Insured Depository Institution is eligible to apply for a BEA Program Award if the

CDFI Fund receives a complete BEA Program Award application by the deadline set forth in the applicable Notice of Funding Availability (NOFA). Additional eligibility requirements are set forth in the applicable NOFA.

### **Subpart C—Use of Funds/Eligible Activities**

#### **§ 1806.300 Eligible Activities.**

Recipients of BEA Program Awards must use their payments for the following Eligible Activities:

- (a) CDFI Related Activities;
- (b) Distressed Community Financing Activities; and
- (c) Service Activities, and to comply with the Uniform Administrative Requirements as further described in the applicable NOFA and the Award Agreement.

#### **§ 1806.301 Restrictions of use of award.**

A Recipient may not distribute BEA Program Award funds to an Affiliate without the CDFI Fund's prior written consent.

### **Subpart D—Award Determinations**

#### **§ 1806.400 General.**

The amount of a BEA Program Award shall be based on the Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period, as set forth in the applicable NOFA. When determining this increase, Applicants must consider all BEA Qualified Activities and all BEA qualified census tracts, as it relates to a given subcategory or activity type, as applicable.

#### **§ 1806.401 Community eligibility and designation.**

(a) *General.* If an Applicant reports that it has provided or engaged in Service Activities or Distressed Community Financing Activities, the Applicant shall identify one or more Distressed Communities in which it has provided or engaged in such activities. The Applicant may identify different Distressed Communities for each category or subcategory of activity. If an Applicant reports that it has provided or engaged in CDFI Support Activities, the Applicant shall provide evidence that the CDFI that the Applicant supported 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 of the area must be contiguous; and

- (iii) The area must:
  - (A) Have a population, as determined by the most recent U.S. Bureau of the 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 U.S. Bureau of the 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 or in other sources as set forth in guidance issued by the CDFI Fund;

- (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 recently published data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census-Share calculation method, or in other sources as set forth in guidance issued by the CDFI Fund; and

- (iii) Such additional requirements as may be specified by the CDFI 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 and 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 and 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.* The CDFI Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. If requested, applicants shall submit designation materials as instructed in the applicable NOFA.

#### **§ 1806.402 Measuring and reporting Qualified Activities.**

- (a) *General.* An Applicant may receive a BEA Program 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 CDFI Fund may further qualify such Qualified Activities in the applicable NOFA, including such additional geographic and transaction size limitations as the CDFI Fund deems appropriate.

(b) *Reporting Qualified Activities.* An Applicant should report only its Qualified Activities for the category or subcategory for which it is seeking a BEA Program Award.

(1) If an Applicant elects to apply for an award in the CDFI Related Activities category, it may elect to report on one or both types of activities within the CDFI Related Activities category.

(2) If an Applicant elects to apply for an award in the Distressed Community Financing Activities category, the Applicant must report on the following subcategories:

(i) Aggregate Consumer Loans; or  
 (ii) Aggregate Commercial Loans and Investments; or

(iii) Both paragraphs (b)(2)(i) and (ii) separately; unless the Applicant provides a reasonable explanation, acceptable to the CDFI Fund, in its sole discretion, as to why the Applicant cannot report on aggregated activities in such subcategories.

(3) If an Applicant elects to apply for an award in the Service Activities category, it may elect to report on one or more types of activities within the Service Activities category.

(c) *Area served.* CDFI Related Activities must be provided to a CDFI. CDFI Partners that are the recipients of CDFI Support Activities must demonstrate that they are 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 Eligible Residents or enterprises that are Integrally Involved in the Distressed Community.

(d) *Certain limitations on Qualified Activities.* Activities funded with the proceeds of Federal funding or tax credit programs are ineligible for purposes of calculating or receiving a Bank Enterprise Award. Please see the applicable NOFA for each funding round's limitations on Qualified Activities. Qualified Activities shall not include loans to or investments in those business types set forth in the Uniform Administrative Requirements.

(e) *Measuring the value of Qualified Activities.* Subject to such additional or alternative valuations as the CDFI Fund may specify in the applicable NOFA, the CDFI 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 CDFI Fund will assess the value of the full amount of the rolled-over deposit. Where an existing loan is refinanced (meaning, a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the CDFI 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 in paragraphs (e)(3)(i) and (ii) of this section:

(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 set forth by the CDFI Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the CDFI 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 closed and 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 agreement 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 CDFI 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 CDFI 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 CDFI Fund.

(g) *Reporting period.* An Applicant must 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 CDFI Fund in the applicable NOFA.

#### **§ 1806.403 Estimated award amounts.**

(a) *General.* An Applicant must calculate and submit to the CDFI Fund an estimated award amount as part of its BEA Program Award application.

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

(c) *Calculating the estimated award amount for Qualified Activities.* (1) The estimated award amount for the CDFI Related Activities category will be equal to the applicable award percentage of the net increase in each activity-type (*i.e.*, Equity Investments/Equity Like-Loans; and CDFI Support Activities) under the CDFI Related Activities category between the Baseline Period and Assessment Period.

(2) The estimated award amount for the Distressed Community Financing Activities category will be equal to the applicable award percentage of the weighted value of each subcategory of

Distressed Community Financing Activities (*i.e.*, Consumer Loans; and Commercial Loans and Investments) between the Baseline Period and Assessment Period. The weighted value of the applicable subcategories shall be calculated by:

- (i) Subtracting the Baseline Period value of such subcategory from the Assessment Period value of such subcategory to yield a difference; and
- (ii) Multiplying the difference by the applicable Priority Factor (as set forth in the applicable NOFA).

(3) The estimated award amount for the Service Activities category will be equal to the applicable award percentage of the weighted value of each activity type between the Baseline Period and Assessment Period. The weighted value of the applicable activity type shall be calculated by:

- (i) Subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a difference; and

- (ii) Multiplying the difference by the applicable Priority Factor (as set forth in the applicable NOFA).

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

#### **§ 1806.404 Selection process; actual award amounts.**

(a) *Sufficient funds available to cover estimated awards.* All BEA Program Awards are subject to the availability of funds. If the amount of appropriated funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the CDFI 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 CDFI Fund in the manner specified in § 1806.403.

(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 CDFI Fund's determination, then the CDFI Fund will select Recipients and determine actual award amounts based on the process described in paragraph (c) of this section and any established maximum dollar amount of awards that may be awarded for the Distressed

Community Financing Activities subcategories, as described in the applicable NOFA.

(c) *Priority of awards.* In circumstances where there are insufficient funds to cover estimated awards, the CDFI Fund will rank Applicants based on whether the Applicant is a CDFI or a non-CDFI, and in each category of Qualified Activity (*e.g.*, Service Activities) according to the priorities described in this paragraph (c). Selections within each priority category will be based on the Applicants' relative rankings within each category, and based on whether the Applicant is a CDFI or a non-CDFI, 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 CDFI Applicants that engaged in CDFI Related Activities, followed by non-CDFI Applicants that engaged in CDFI Related Activities ranked in the ratio as set forth in the applicable NOFA.

(2) *Second priority.* If the amount of funds available during a funding round is sufficient for all first priority Applicants but insufficient for all remaining estimated award amounts, second priority will be given to CDFI Applicants that engaged in Distressed Community Financing Activities, followed by non-CDFI Applicants that engaged in Distressed Community Financing Activities, ranked in the ratio as set forth in the applicable NOFA.

(3) *Third priority.* If the amount of funds available during a funding round is sufficient for all first and second priority Applicants, but insufficient for all remaining estimated award amounts, third priority will be given to CDFI Applicants that engaged in Service Activities, followed by non-CDFI Applicants that engaged in Service Activities, ranked in the ratio as set forth in the applicable NOFA.

(d) *Calculating actual award amounts.* The CDFI 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 CDFI Fund will combine the award amounts into a single BEA Program Award.

(e) *Unobligated or deobligated funds.* The CDFI 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 CDFI Fund, in its sole discretion, may deny or limit the amount of a BEA Program Award for any reason.

#### **§ 1806.405 Applications for BEA Program Awards.**

(a) *Notice of funding availability; applications.* Applicants must submit applications for BEA Program Awards in accordance with this section and the applicable NOFA. An Applicant's application must demonstrate a realistic course of action to ensure that it will meet the requirements described in subpart D of this part within the period set forth in the applicable NOFA.

Detailed application content requirements are found in the related application and applicable NOFA. The CDFI Fund will not disburse an award to an Applicant before it meets the eligibility requirements described in the applicable NOFA. The CDFI Fund shall require an Applicant to meet any additional eligibility requirements that the CDFI Fund deems appropriate. After receipt of an application, the CDFI Fund may request clarifying or technical information related to materials submitted as part of such application and/or to verify that Qualified Activities were carried out in the manner prescribed in this part. The CDFI Fund, in its sole discretion, shall determine whether an applicant fulfills the requirements set forth in this part and the applicable NOFA.

(b) *Application contents.* An application for a BEA Program Award must contain:

(1) A completed electronic application module that reports the increases in Qualified Activities actually carried out during the Assessment Period as compared to those carried out during the Baseline Period. If an Applicant has merged with another institution during the Assessment Period, it must determine the Baseline Period amounts and Assessment Period amounts of the Qualified Activities of the merged institutions, and report the increase;

(2) An electronic application module which includes transactions to be considered for award calculation purposes. The transactions will include Qualified Activities that were closed during the Assessment Period. Applicants shall describe the original amount, census tract served (if

applicable), dates of execution, initial disbursement, and final disbursement of the instrument for each transaction;

(3) Documentation of Qualified Activities that meets the required thresholds and conditions described in § 1806.402(f) and the applicable NOFA;

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

(5) Certifications, as described in the applicable NOFA and BEA Program Award application, that the information provided to the CDFI 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 that engaged in Service Activities, or Distressed Community Financing Activities, the Applicant must confirm, by submitting documentation as described in the applicable NOFA and BEA Program application, the Service Activities or Distressed Community Financing Activities were provided to:

- (i) Eligible Residents; or
- (ii) A business located in a Distressed Community.

(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 BEA Program application; and

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

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

### **§ 1806.500 Award Agreement; sanctions.**

(a) *General.* After the CDFI Fund selects a Recipient, the CDFI Fund and the Recipient will enter into an Award Agreement. In addition to the requirements of the Uniform Administrative Requirements, the Award Agreement will require that the Recipient:

(1) Must carry out its Eligible Activities in accordance with applicable law, the approved BEA Program application, and all other applicable requirements;

(2) Must comply with such other terms and conditions that the CDFI Fund may establish;

(3) Will not receive any BEA Program Award payment until the CDFI Fund

has determined that the Recipient has fulfilled all applicable requirements;

(4) Must comply with performance goals that have been established by the CDFI Fund. Such performance goals will include measures that require the Recipient to use its BEA Program Award funds for Eligible Activities; and

(5) Must comply with all data collection and reporting requirements. Each Recipient must submit to the CDFI Fund such information and documentation that will permit the CDFI Fund to review the Recipient's progress in satisfying the terms and conditions of its Award Agreement, including:

(i) *Annual report.* Each Recipient shall submit to the CDFI Fund at least annually and within 90 days after the end of each year of the Recipient's performance period, an annual report that will provide data that, among other things, demonstrates the Recipient's compliance with its performance goals (including a description of any noncompliance), its uses of the BEA Program Award funds, and the impact of the BEA Program and the CDFI industry. Recipients are responsible for the timely and complete submission of the annual report.

(ii) *Financial statement.* A Recipient is not required to submit its financial statement to the CDFI Fund. The CDFI Fund may obtain the necessary information from publicly available sources.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Recipient, the CDFI Fund may terminate, reduce, or recapture the award, bar the Recipient and/or its Affiliates from applying for an award from the CDFI Fund for a period to be decided by the CDFI Fund in its sole discretion, and pursue any other available legal remedies.

(c) *Compliance with other CDFI Fund awards.* In the event that an Applicant, Recipient, or its Subsidiary or Affiliate is not in compliance, as determined by the CDFI Fund, with the terms and conditions of any CDFI Fund award, the CDFI Fund may, in its sole discretion, bar said Applicant or Recipient from applying for future BEA Program Awards or withhold payment (either initial or subsequent) of BEA Program Award funds.

(d) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the CDFI Fund will provide the Recipient with written notice of the proposed sanction and an opportunity to respond. Nothing in this section, however, will provide a Recipient with the right to any formal or

informal hearing or comparable proceeding not otherwise required by law.

### **§ 1806.501 Compliance with government requirements.**

In carrying out its responsibilities pursuant to an Award Agreement, the Recipient must comply with all applicable Federal, State, and local laws, regulations (including but not limited to the Uniform Administrative Requirements, ordinances, and Executive Orders).

### **§ 1806.502 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.

### **§ 1806.503 Books of account, records, and government access.**

(a) A Recipient 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 CDFI 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 Recipient'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.

(b) The Award Agreement provides that the provisions of the Act, this part, and the Award Agreement are enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (b) precludes the CDFI Fund from directly enforcing the Award Agreement as provided for under the terms of the Act.

(c) The CDFI Fund will notify the Appropriate Federal Banking Agency before imposing any sanctions on a Recipient that is examined by or subject to the reporting requirements of that agency. The CDFI Fund will not impose a sanction described in § 1806.500(b) if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the CDFI Fund:

(1) Objects to the proposed sanction;  
 (2) Determines that the sanction would:  
     (i) Have a material adverse effect on the safety and soundness of the Recipient; or  
     (ii) Impede or interfere with an enforcement action against that Recipient by the Appropriate Federal Banking Agency;  
 (3) Proposes a comparable alternative action; and  
 (4) Specifically explains:  
     (i) The basis for the determination under paragraph (c)(2) of this section and, if appropriate, provides documentation to support the determination; and  
     (ii) How the alternative action suggested pursuant to paragraph (c)(3) of this section would be as effective as the sanction proposed by the CDFI Fund in securing compliance and deterring future noncompliance.

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

#### **§ 1806.504 Retention of records.**

A Recipient must comply with all record retention requirements as set forth in the Uniform Administrative Requirements.

**Dennis E. Nolan,**

*Deputy Director, Community Development Financial Institutions Fund.*

[FR Doc. 2016-18694 Filed 8-9-16; 8:45 am]

BILLING CODE 4810-70-P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA-2016-5462; Directorate Identifier 2015-NM-131-AD; Amendment 39-18606; AD 2016-16-08]**

RIN 2120-AA64

#### **Airworthiness Directives; Airbus Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain

Airbus Model A330-200, -200 Freighter and -300 series airplanes; and Model A340-200 and -300 series airplanes. This AD was prompted by reports of spurious terrain awareness warning system (TAWS) alerts during approach and takeoff for airplanes fitted with the terrain and traffic collision avoidance system with transponder (T3CAS) when the T3CAS is constantly powered "ON" for more than 149 hours. This AD requires repetitive on-ground power cycle of the T3CAS. We are issuing this AD to prevent spurious TAWS alerts (collision prediction and alerting (CPA)), or missing legitimate CPA, which could increase flight crew workload during critical landing or takeoff phases, and could possibly result in reduced control of the airplane.

**DATES:** This AD is effective September 14, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 14, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-5462.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-5462; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA,

1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330-200, -200 Freighter and -300 series airplanes; and Model A340-200 and -300 series airplanes. The NPRM published in the **Federal Register** on April 12, 2016 (81 FR 21484) ("the NPRM").

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015-0125, dated July 1, 2015; corrected July 3, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A330-200, -200 Freighter and -300 series airplanes; and Model A340-200 and -300 series airplanes. The MCAI states:

Cases were reported of spurious Terrain Awareness Warning System (TAWS) alerts during approach and take off, with aeroplane fitted with the Terrain and Traffic Collision Avoidance System with Transponder (T3CAS). Investigations on the unit were launched with the manufacturer of the system (ACSS). The results of the laboratory investigation confirmed that an internal frozen Global Positioning System position anomaly occurs when the T3CAS is constantly powered 'ON' for more than 149 hours. The origin for this defect was identified as a counter limitation related to a T3CAS internal software misbehaviour, not self-detected.

This condition, if not corrected, could lead to spurious TAWS alerts (Collision Prediction and Alerting (CPA)), or missing legitimate CPA, which could increase flight crew workload during critical landing or take off phases, possibly resulting in reduced control of the aeroplane.

Prompted by these reports, Airbus issued Alert Operators Transmission (AOT) A34L003-13 to provide instructions to accomplish an on ground repetitive power cycle of the T3CAS before exceeding 120 hours of continuous power, and EASA issued AD 2014-0242 to require repetitive on ground power cycles of the T3CAS unit.

Since that [EASA] AD was issued, the AOT A34L003-13 revision 1 has been issued which extend[s] the applicability to A340 aeroplanes modified in-service in accordance with Airbus SB 34-4282 (T3CAS std 1.2 unit installation). It was also identified that [EASA] AD 2014-0242 does not refer to affected A330 in-service aeroplanes on which SB A330-34-3271 or SB A330-34-3286 or SB A330-34-3301 have been embodied.

For the reason described above, this [EASA] AD retains the same required actions