

## DEPARTMENT OF THE TREASURY

## Community Development Financial Institutions Fund

## 12 CFR Part 1806

RIN 1505-AA71

## Bank Enterprise Award Program

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

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

**SUMMARY:** The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award (BEA) Program administered by the Community Development Financial Institutions Fund (Fund). The purpose of the BEA Program is to encourage insured depository institutions to increase their level of activities in the form of loans, investments, services, and technical assistance within distressed communities and to provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The BEA Program rewards participating insured depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. The revisions contain a number of changes which clarify current requirements, but do not change them. This rule also simplifies current requirements and updates various references, and contains one revision that the Fund believes will generally inure to the benefit of insured depository institutions. Specifically, the revision clarifies the measured value of renewed loans and rolled over time deposits to include the entire amount of the renewed loans and rolled over deposits. However, in order to facilitate implementation of the BEA program regulations by participating insured depository institutions, the complete text of the regulations, as amended, is published by this interim rule.

**DATES:** Interim rule effective December 5, 1997; comments must be received on or before April 6, 1998.

**ADDRESSES:** All comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. Comments may be inspected at the above address between 9:30 a.m. and 4:30 p.m. on business days.

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

## SUPPLEMENTARY INFORMATION:

## I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute. The Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry. This initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left behind by the economic mainstream.

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

The purpose of the BEA Program is to encourage insured depository institutions to increase loans, services, and technical assistance within distressed communities and to make Equity Investments or engage in CDFI Support Activities. The BEA Program rewards participating insured depository institutions for increasing their activities in economically

distressed communities and investing in CDFIs. Applicants participate in the Program through a competitive process which evaluates applications based on the value of proposed increases in their specified activities. Program participants receive monies only after successful completion of the specified activities.

Elsewhere in this issue of the **Federal Register** is a separate Notice of Funds Availability (NOFA) for this Program. A final regulation will be published after receipt and consideration of public comments. The Fund previously promulgated an interim regulation with a request for comment, which was published in the **Federal Register** on March 7, 1997 (62 FR 10679). No comments were received in response to the March 7, 1997 interim rule. Since these regulations were last amended, the Fund has identified several provisions that need to be updated, clarified, or simplified.

## II. Summary of Changes

*Authorities*

The current rule contains a list of authorities. This interim rule updates the list by adding 12 U.S.C. 4713, 12 U.S.C. 1834a, and 31 U.S.C. 321. Such authorities concern the promulgation of regulations, procedures and guidelines. The current rule lists 12 U.S.C. 4703 note with a reference to Pub. L. 104-19. The Fund is deleting the reference to this public law, for purposes of regulatory economy and because there is more than one public law underlying the section 4703 note.

*Definition of Community Services*

Section 1806.103(p)(1) of the current rule defines the forms of assistance that constitute Community Services. This interim rule does not change the definition of what constitutes Community Services, but it clarifies that all forms of such assistance may be provided by officers, employees, or agents (contractual or otherwise) of the Applicant. This revision conforms with the Fund's interpretation of the current rule.

*Measuring the Value of Renewed Loans and Rolled Over Deposits*

Section 1806.202(c)(1) of the current rule provides that for purposes of calculating BEA Program awards, the Fund will assess the value of Equity Investments, loans, grants, and deposits at the original amount of such investments, loans, grants or deposits. Section 1806.202(c)(1) of the current rule excludes the value of any loans which are renewed, rolled over, or

refinanced in an amount equal to or less than the principal amount outstanding at the time of refinancing. Because the Fund believes that the interim rule in its current form: (1) Appears too restrictive with regard to loans; and (2) is unclear with regard to renewed loans and rolled over time deposits, the Fund is revising § 1806.202(c)(1) as follows.

With regard to loans, the Fund believes that where a loan matures, is fully paid, and is then renewed during an applicable Baseline or Assessment period, the renewed loan constitutes a new origination. As such, the Fund will assess the full principal amount of the renewed loan in calculating a BEA Program award. However, the Fund is not changing the current interim rule with regard to refinancings. Specifically, where a loan is refinanced during an applicable Baseline or Assessment period, the Fund will only assess the value of any increase in the principal amount of the refinanced loan.

With regard to deposits, the Fund will assess the full amount of any deposit which is rolled over during an applicable Baseline or Assessment period. For example, where an Applicant made a time deposit with an insured CDFI, e.g. a five year certificate of deposit with an interest rate materially below market rates, which matures and is rolled over during an Assessment Period, the Fund will assess the full amount of the rolled over time deposit in calculating a BEA Program award.

#### *Estimated Award Amounts for Development and Service Activities*

The current rule at 12 CFR 1806.203(c)(3) describes a calculation step for estimating an award amount for Development and Service Activities. This step requires adding the weighted values of deposit liabilities and Financial Services to yield a service score. This revised rule corrects an omission to the step by adding Community Services. This addition conforms with previous and the most current BEA Program Application packets.

For purposes of regulatory economy, the Fund is deleting the parenthetical reference in § 1806.203(c)(5) of the current rule, which references the Act. This deletion is technical in scope and will have no substantive effect on the implementation of the BEA Program.

#### *Application Contents for Equity Investment and CDFI Support Activities*

Section 1806.206(b)(9) of the current rule describes the collection of information requirements set forth in the Application packet for those

Applicants proposing to engage in CDFI Related Activities. The current rule describes the Application packet as requiring each Applicant to submit a narrative description of each CDFI in which it proposes to engage in CDFI Related Activities and a description of the amount, terms, and conditions of the assistance to be provided or, alternatively, a list of potential CDFIs and a description of the Applicant's investment, lending, or selection criteria. However, the most recently revised Application packet, which has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995, simplifies the collection of information from Applicants. Specifically, the revised Application packet requires Applicants to list the potential CDFIs to which they may provide assistance and provide a description of the amount, terms, and conditions for such assistance. Because the revised Application packet does not require a narrative description of each potential CDFI or a description of the Applicant's investment, lending or selection criteria, the Fund is revising § 1806.206(b)(9) in this interim rule to accurately reflect the collection of information requirements set forth in the most current Application packet.

### **III. Rulemaking Analysis**

#### *Executive Order 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 revised 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 1505-0153. 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 the collections of information should be directed to the

Director, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

#### *National Environmental Policy Act*

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

#### *Administrative Procedure Act*

The Fund is promulgating this revised 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 finds good cause for dispensing with a notice of proposed rulemaking because such advance notice and public procedure are unnecessary. First, most of the changes in this interim rule are minor or technical amendments which do not affect the substance of the regulation. Second, the changes to this interim rule are narrow in scope, clarify existing requirements, and inure to the benefit of the regulated community, namely insured depository institutions, by making participation in the BEA Program easier for Applicants, reducing regulatory burden, and clarifying the measured value of renewed loans and rolled over time deposits.

The Fund also is making this interim rule effective upon publication without providing the 30-day period between publication and effective date contemplated by the APA because, as noted above, the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA found at 5 U.S.C. 553(d). 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, which as stated in the NOFA published elsewhere in this issue of the **Federal Register**, will begin on January 1, 1998. The Fund also believes that an immediate effective date is appropriate because this interim rule inures to the benefit of the affected community by removing a potential restriction on the measured value of renewed loans and rolled over time deposits.

*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.

**IV. Catalog of Federal Financial Assistance Numbers**

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**

Sec.

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

**Subpart B—Awards**

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

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

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

**Authority:** 12 U.S.C. 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 encourage insured depository institutions to make Equity Investments and carry out CDFI Support Activities and Development and Service Activities to revitalize distressed urban and rural communities.

**§ 1806.101 Summary.**

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

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

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

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

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

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

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

**§ 1806.103 Definitions.**

For the purpose of this part:

- (a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);
- (b) *Agricultural Loan* means an origination of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);
- (c) *Applicant* means any insured depository institution (as defined in

section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

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

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

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

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

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

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

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

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

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

(m) *Community Development Financial Institution* (or CDFI) means an entity whose certification as a CDFI under § 1805.201 of this chapter is in effect as of the end of the applicable Assessment Period (the Assessment Period in which the Qualified Activity takes place) and that meets the requirements of § 1805.200(b) through (h) of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (m). If an Applicant is proposing to make an Equity Investment or engage in CDFI Support Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.701(b) of this chapter. In order for the Applicant to be eligible to receive an award for its activity, the required information with respect to the

uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA published in the **Federal Register**, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding anything in this paragraph (m) to the contrary, an Applicant may receive an award pursuant to this part for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the requirements of § 1805.200(b) through (h) of this chapter if:

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

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

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

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

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

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

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

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

(1) Provision of technical assistance to Residents in managing their personal finances through consumer education programs;

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

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

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

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

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

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

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

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

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

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

(x) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(y) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to

section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

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

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

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

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

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

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

(ff) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation; and

(gg) *Unit of General Local Government* means any city, county town, township, parish, village or other general purpose political subdivision of a State or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

#### § 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver 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 1505-0153.

**Subpart B—Awards****§ 1806.200 Community eligibility and designation.**

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

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

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

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

(ii) The boundaries of which are contiguous; and

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

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

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

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

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

(ii) The unemployment rate is at least 1.5 times greater than the national

average, as determined by the U.S. Bureau of Labor Statistics' most recent data including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method. U.S. Bureau of Labor Statistics data and information necessary for Census Share calculations may be obtained from the Fund.

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

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

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

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

**§ 1806.201 Qualified Activities.**

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

(b) *Development and Service Activities.* (1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Development and Service Activities during an Assessment Period.

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

(i) Undertaken in the Distressed Community; or

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

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

(4) *Development and Service Activities.* Development and Service

Activities are listed in this paragraph with their corresponding priority factors:

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

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

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

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

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

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

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

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

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

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

(c) *Limitation.* Financial assistance provided by an Applicant for which the Applicant receives benefits through the Low Income Housing Tax Credit authorized pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award.

**§ 1806.202 Measuring activities.**

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. If an Applicant is seeking assistance only for CDFI Related Activities, it should only report its activities for CDFI Related Activities categories. If an Applicant is seeking assistance only for Development and Service Activities, it should only report its activities for Development and Service Activities categories. If an Applicant is seeking assistance for both

CDFI Related Activities and Development and Service Activities, it should report its activities for both types of categories. If an Applicant is unable to report its activities in the aforementioned manner, the Applicant shall provide an explanation satisfactory to the Fund as to why it cannot report required information and simultaneously submit to the Fund a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in a NOFA for each funding round.

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

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

(1) Equity Investments, loans, grants and deposits described in § 1806.103 at the original amount of such investments, loans, grants or deposits. Where a loan matures, is fully paid and is then renewed, the Fund will assess the value of the principal amount of the renewed loan. Where a deposit, such as a certificate of deposit, matures and is then rolled over, the Fund will assess the value of the full amount of the rolled over deposit. However, where an existing loan is refinanced, the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Deposit liabilities at the face dollar amount of monies deposited as measured by comparing the net change in the amount of applicable funds (as described in § 1806.201(b)(4)(i)) on deposit at the Applicant institution during the period described in this paragraph (c)(2). An Applicant shall measure the net changes in deposit liabilities during:

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

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

(3) Financial Services, Community Services, and CDFI Support Activities

consisting of technical assistance based on the administrative costs of providing such services; and

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

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

(1) The documentation evidencing the transaction:

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

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

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

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

(1) Completed during the Baseline Period; and

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

#### § 1806.203 Estimated award amounts.

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

(a) *Equity Investments.* The estimated award amount for an Equity Investment will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment between the Baseline Period and Assessment Period.

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

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

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

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

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

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

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score;

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

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

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

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

#### § 1806.204 Selection process.

(a) *Availability of funds.* All awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient for all estimated award amounts, an Applicant that meets all of the program requirements specified in this part shall receive an award that is calculated in the manner specified in § 1806.205. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

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

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

(A) Equity Investments in CDFIs serving Distressed Communities;

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

(C) CDFI Support Activities.

(ii) *Ranking Equity Investments.*

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

(iii) *Ranking CDFI Support Activities.*

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

(3) *Second priority.* (i) If the amount of funds available during a funding round is sufficient for all CDFI Related Activities but insufficient for all estimated award amounts, second priority will go to Applicants that propose to engage in Development and Service Activities.

(ii) *Ranking Development and Service Activities.*

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

(4) *Combined awards.* If an Applicant receives an award for more than one priority category described in this

section, the award amounts will be combined into a single Bank Enterprise Award.

#### § 1806.205 Actual award amounts.

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

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

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

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

(c) *Unobligated or deobligated funds.*

The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

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

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

(ii) To select Applicants not previously selected;

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

(3) As otherwise authorized by the Act.

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

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

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

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

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

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

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

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

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

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

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

(8) In the case of an Applicant proposing to engage in Development



and Service Activities, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

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

(i) *Equity Investment.* An Applicant shall submit a list of potential CDFIs to which assistance may be provided, and a description of the amount, terms and conditions of any Equity Investment that may be provided.

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

(A) A list of potential CDFIs to which assistance may be provided and a description of the amount, terms and conditions of the assistance that may be provided; and

(B) Information that indicates that each CDFI to which an Applicant proposes to provide CDFI Support Activities is integrally involved within a Distressed Community, a completed Distressed Community Designation worksheet, and a map and narrative description of the Distressed Community.

### Subpart C—Terms and Conditions of Assistance

#### § 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

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

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

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

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the

Fund may terminate, reduce, or recapture the award and pursue any other available legal remedies.

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

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

At the end of an Assessment Period, each Applicant shall submit to the Fund:

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

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

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

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

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

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

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

#### § 1806.302 Compliance with government requirements.

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

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

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

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

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

#### § 1806.305 Retention of records.

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

Dated: November 25, 1997.

**Maurice A. Jones,**

*Acting Deputy Director.*

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