

### Subpart A—General Provisions

#### § 1806.100 Purpose.

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

#### § 1806.101 Summary.

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

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

(b) Distressed Communities must meet minimum geographic, poverty and unemployment criteria.

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

#### § 1806.102 Relationship to other Community Development Financial Institutions Programs.

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

#### § 1806.103 Definitions.

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

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

(b) *Affordable Housing Development Loan* means origination of a loan to finance the acquisition, construction,

and/or development of single- or multi-family residential real property, where at least sixty percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Low- and Moderate-Income Eligible Residents.

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

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

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

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

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

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

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

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

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

(l) *Commercial Real Estate Loan* means the origination of a loan (other than an

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Affordable Housing Development Loan or Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and/or development of property in a Distressed Community, used for commercial purposes;

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

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

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

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

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

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

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

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

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

(r) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the Fund in the applicable NOFA, that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

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

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

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

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

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

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

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

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

(y) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of

a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the Fund;

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

(aa) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, new branches, and other comparable services as may be specified by the Fund in the applicable NOFA, that are provided by the Applicant to Low- and Moderate-Income Eligible Residents or enterprises Integrally Involved in the Distressed Community;

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

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

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

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

(ff) *Individual Development Account (or IDA)* means an account that meets the requirements, and with respect to the provision of which Applicant has satisfied the requirements, set forth in the

U.S. Department of Health and Human Services Program Announcement OCS–2000–04, published on December 14, 1999 in the FEDERAL REGISTER at 64 FR 69824, as such requirements may be amended from time to time;

(gg) *Integrally Involved* means:

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

(ii) For a non-CDFI, having directed the percentage of its business activities (*e.g.*, investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant, or having provided the percentage of its business activities in said Distressed Community, set forth in the applicable NOFA.

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

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

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

(kk) *Priority Factor* means a numeric value assigned to each type of activity

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within each category of Qualified Activity, as may be established by the Fund in the applicable NOFA. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

(ll) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is Integrally Involved in a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans;

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

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

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

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

(qq) *Targeted Financial Services* means ETAs, IDAs, and such other similar

banking products as maybe specified by the Fund in the applicable NOFA;

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

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

### § 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the FEDERAL REGISTER.

### § 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559-0005.

## Subpart B—Awards

### § 1806.200 Community eligibility and designation.

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