

the Internet (<http://www.whitehouse.gov/OMB/grants/index.html>); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

**§ 1805.805 Information.**

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

**§ 1805.806 Compliance with government requirements.**

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

**§ 1805.807 Conflict of interest requirements.**

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and

contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

**§ 1805.808 Lobbying restrictions.**

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

**§ 1805.809 Criminal provisions.**

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and Insiders.

**§ 1805.810 Fund deemed not to control.**

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

**§ 1805.811 Limitation on liability.**

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

**§ 1805.812 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.

Dated: January 27, 2003.

**Tony T. Brown,**

*Director, Community Development Financial Institutions Fund.*

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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:** 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 mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within Distressed Communities and provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. This revised interim rule: improves programmatic operating efficiencies; targets program incentives to encourage the provision of investment, credit and financial services in Distressed Communities that demonstrate the most extreme need, to CDFIs that serve such Distressed Communities, and to smaller, less well capitalized CDFIs; reduces applicants' documentary and reporting burdens; clarifies and redefines the requirements of certain Qualified Activities; redefines and adds new categories of Qualified Activities; changes some methodologies for calculating BEA Program awards, including the application of caps to such awards; and simplifies some reporting and documentation requirements.

**DATES:** Interim rule effective February 4, 2003; comments must be received on or before April 7, 2003.

**ADDRESSES:** You may send hard copy comments concerning this interim rule to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department

of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. You may also send us comments by e-mail at [reg\\_comments@cdfi.treas.gov](mailto:reg_comments@cdfi.treas.gov). When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at <http://www.cdfifund.gov>.

**FOR FURTHER INFORMATION CONTACT:** Margaret Nilson, Depository Institutions Manager, the Community Development Financial Institutions Fund, at (202) 622-6355. (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. 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 mission of the Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

Through the BEA Program, the Fund seeks to: strengthen and expand the financial and organizational capacity of CDFIs; provide financial incentives to insured depository institutions to increase their lending and services in Distressed Communities; and increase the flow of private capital into Low- and Moderate-Income areas. Applicants participate in the BEA Program through a competitive process, which evaluates applications based on the value of their increases in certain Qualified Activities.

Program participants receive BEA Program award proceeds only after successful completion of the specified Qualified Activities.

On December 5, 1997, the Fund published in the **Federal Register** an interim regulation (62 FR 64439) implementing the BEA Program (the current rule). The deadline for the submission of comments was April 6, 1998.

**II. Comments on the December 5, 1997 Interim Rule**

By the close of the April 6, 1998 comment period, the Fund received no comments on the December 5, 1997 interim rule.

**III. Summary of Changes**

(1) *Purpose:* Section 1806.100 of the current rule contains a description of the purpose of the BEA Program. This interim rule revises such purpose to more accurately describe the purpose of the BEA Program.

(2) *New Definitions:* Section 1806.103 of the revised interim rule contains a number of new definitions: Community Development Entity (§ 1806.103(m)) which includes entities certified through the New Markets Tax Credit Program; CDFI Partner (§ 1806.103(o)) which includes CDFIs to which Applicants have provided assistance; and Deposit Liabilities (§ 1806.103(s)) includes savings and other deposit accounts. In addition, the revised interim rule defines Electronic Transfer Account (ETA) (§ 1806.103(w)), First Account (§ 1806.103(aa)), and Individual Development Account (IDA) (§ 1806.103(ff)) (such terms were defined in Notices of Funds Availability for certain prior BEA Program funding rounds).

(3) *Definitions for New Categories of Qualified Activities:* The revised interim rule creates Service Activities (§ 1806.103(oo)), a new category of Qualified Activities (§ 1806.103(mm)). The Service Activities category includes: Community Services (§ 1806.103(rr)); Deposit Liabilities (§ 1806.103(s)); Financial Services (§ 1806.103(z)); Targeted Financial Services (§ 1806.103(rr)); and Targeted Retail Savings/Investment Products (§ 1806.103(ss)). Targeted Financial Services is a new category that includes ETAs, First Accounts, and IDAs. Targeted Retail Savings/Investment Products is a new sub-category that includes savings and other investment products targeted to Low- and Moderate-Income Residents of Distressed Communities.

The revised interim rule eliminates Development Activities

(§ 1806.201(b)(4) of the current rule), re-designating Development Activities as Distressed Community Financing Activities (§ 1806.103(u)). Distressed Community Financing Activities include: Affordable Housing Development Loans (§ 1806.103(b)); Affordable Housing Loans (§ 1806.103(c)); Home Improvement Loans (§ 1806.103(dd)); Education Loans (§ 1806.103(v)); Commercial Real Estate Loans (§ 1806.103(l)); and Small Business Loans (§ 1806.103(pp)). Affordable Housing Development Loan activities comprise loans related to the development of residential real property that is affordable to Low- and Moderate-Income households. Affordable Housing Loan means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is a Low- and Moderate-Income individual (included in the Single Family Loans category of the current rule). Correspondingly, Single Family Loans have been re-designated as Home Improvement Loans and mean advances of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence. Education Loan means an advance of funds to a Resident of a Distressed Community for the purpose of financing a college or vocational education. Small Business Loan has been modified from focusing on the size of the loan to the size of the business and means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Finance Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less.

(4) *Definitions Related to Certain Qualified Activities:* Consistent with the Fund's objective of ensuring that BEA Program awards are targeted to institutions that provide capital and services to CDFIs and other enterprises that have significant impact in their communities, the revised interim rule provides that certain types of CDFI Support Activities (§ 1806.103(q)), Community Services (§ 1806.103(r)), and Financial Services (§ 1806.103(z)), must be, among other requirements, provided to CDFIs or other enterprises, as applicable, that are Integrally

Involved in a Distressed Community (§ 1806.200). The revised interim rule defines Integrally Involved (§ 1806.103(gg)) as meaning

(a) for a CDFI Partner, having provided at least five percent of financial transactions or dollars transacted (e.g., loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, or having transacted at least ten percent of financial transactions (e.g., loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or

(b) for a non-CDFI, having directed at least five percent of its business activities (e.g., investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA.

The revised interim rule also provides that the Fund may qualify further certain Qualified Activities, for example, through the application of dollar amount caps, in the applicable NOFA.

(5) *Measuring and Reporting Qualified Activities*: Much of the information contained in § 1806.201 of the current rule has been consolidated in the revised interim rule to remove repetitive material and to improve readability. In addition, sections concerning the measurement of Qualified Activities (§ 1806.202(a)–(e) of the current rule) have been incorporated in § 1806.201 of the revised interim rule. The revised interim rule omits the Priority Factors (see § 1806.201(b)(3) of the current rule), and provides in § 1806.103(kk) that such Priority Factors shall be set forth in the applicable NOFA.

(6) *Low-Income Housing Tax Credits; New Markets Tax Credits*: Sections 1806.201(d)(1) and (2) of the revised

interim rule provide that activity by an Applicant shall not be considered a Qualified Activity if, with respect to such activity, the Applicant has received an allocation of Low-Income Housing Tax Credits or New Markets Tax Credits.

(7) *Treatment of Renewed/Refinanced Loans*: Section 1806.201(e)(1) of the revised interim rule clarifies the Fund's treatment of renewed and refinanced loans. The Fund will continue to value refinanced loans based upon the increase in principal over the original loan. However, financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award if, such activity has matured and is then renewed. This treatment of renewed and refinanced loans is consistent with the Fund's objective of creating incentives for providing new capital. The Fund recognizes that while there is value to borrowers in having loan maturities extended and other terms renegotiated, such activities, strictly speaking, do not create an additional flow of funds.

(8) *Estimated award amounts*: Section 1806.202 of the revised interim rule provides that the estimated award amounts for all Qualified Activities (not solely for Development and Service as is the case under § 1806.203(c) of the current rule) shall be determined by applying the appropriate:

(a) award percentage (§ 1806.202(b)), as such percentages are set forth in the applicable NOFA, and

(b) Priority Factor, where applicable, as set forth in the applicable NOFA (§ 1806.202(c)).

(9) *Selection Process, actual award amounts*: Section 1806.203 of the revised interim rule sets forth the statutorily prescribed first priority for BEA Program awards for activities that have supported CDFIs. However, the revised interim rule omits the rankings of particular Qualified Activities within priority categories (§ 1806.204(b) of the current rule). Rather, the revised interim rule provides that the Fund will set forth the applicable rankings of particular Qualified Activities within a priority category in the applicable NOFA. In addition, the interim revised rule incorporates most of § 1806.205 of the current rule into § 1806.203, and deletes the "75 percent rule" (§ 1806.205(b) of the current rule).

(10) *Applications for Bank Enterprise Awards*: Section 1806.204 of the revised interim rule is substantially the same as § 1806.206 of the current rule. The revised interim rule omits the requirements that the Applicant submit a copy of its certificate of insurance

(§ 1806.206(b)(1) of the current rule); a narrative description of its Qualified Activities (§ 1806.206(b)(3) of the current rule); a report of its asset size (§ 1806.206(b)(4) of the current rule); and a copy of its most recent annual report (§ 1806.206(b)(7) of the current rule). The Fund believes that this information duplicates other information that is available to the Fund via other sources, including appropriate banking agencies.

(11) *Award Agreement; Sanctions*: Section 1806.300(c) of the revised interim rule provides that if a BEA Program award recipient, or its Subsidiary or Affiliate, fails to comply with the terms and conditions of its BEA Program award agreement, or the terms and conditions of any other assistance agreement under the CDFI Program, then the Fund may reject such Applicant's application or withhold any disbursement of such award funds.

(12) *Clarification on Measuring Certificates of Deposits*: Section 1806.103(q) of the revised interim rule provides that any certificate of deposit placed by an Applicant in a CDFI that is a bank, thrift, or credit union may be either:

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

(ii) Insured and committed for a term of at least three years, if it earns a rate of interest that is determined by the Fund to be materially below market, as set forth in the applicable NOFA.

#### IV. Rulemaking Analysis

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

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

##### (2) *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.

##### (3) *Paperwork Reduction Act*

The collections of information contained in this interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559–0005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

(4) *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.

(5) *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 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 that, as stated in the NOFA published elsewhere in this issue of the **Federal Register**, will begin on January 1, 2003.

(6) *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.

(7) *Catalog of Federal Financial Assistance Number*

Bank Enterprise Award Program—21.021.

(8) *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 Measuring and Reporting Qualified Activities.
- 1806.202 Estimated award amounts.
- 1806.203 Selection process, actual award amounts.
- 1806.204 Applications for Bank Enterprise Awards.

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

- 1806.300 Award Agreement; sanctions.
- 1806.301 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 provide an incentive for insured depository institutions to increase their activities in Distressed Communities, and provide financial assistance to Community Development Financial Institutions.

**§ 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 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. 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) Directly received assistance from the Fund under the Community Development Financial Institutions Program within the 12-month period prior to the date the Fund selected the Applicant to receive a Bank Enterprise Award; 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 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 individuals.

(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 individual. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or "soft second" mortgages, and other similar types of downpayment 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 individual.

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

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

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

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

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

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

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

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

(l) *Commercial Real Estate Loan* means an origination of a loan (other than an Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building, or the acquisition, construction and or development of property, 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 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 of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (n). If an Applicant is proposing to engage in CDFI Related Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.201(b) of this chapter. In order for the Applicant to be eligible to receive a Bank Enterprise Award for its CDFI Related Activities, the required

information with respect to the uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding anything in this paragraph (n) 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 of this chapter if the uncertified CDFI is certified by the end of the applicable Assessment Period.

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

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

(q) *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;

(r) *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, through consumer education programs, to Residents regarding managing their personal finances;

(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 to Low- and Moderate-Income individuals in a Distressed Community or enterprises Integrally Involved in a Distressed Community, as deemed appropriate by the Fund;

(s) *Deposit Liabilities* means time or savings deposits or demand deposits, accepted from 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 nontransaction 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 a Resident of a Distressed Community, 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) *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;

(y) *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 (consistent with requirements of the Appropriate Federal Banking Agency), as such characteristics may be specified by the Fund in the applicable NOFA;

(z) *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 individuals in the Distressed

Community or enterprises Integrally Involved in the Distressed Community;

(aa) *First Account* means a low-cost account and such other services designed to expand access to financial services for Low- and Moderate-Income individuals, provided pursuant to grants made under the Consolidated Appropriations Act, 2001 (Public Law 106-554, 114 Stat. 2763, 2763A-126), and the Department of Transportation and Related Agencies Appropriations Act, 2001 (Public Law 106-346, 114 Stat. 1356, 1356A-44);

(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 at least five percent of financial transactions or dollars transacted (e.g., loans or equity investments as defined in 12 CFR 1805.104(s)), or five percent of Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the

applicable NOFA, or having transacted at least ten percent of financial transactions (e.g., loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or demonstrating that it has attained at least five percent of market share for a particular product in said Distressed Community (such as at least five percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA; or (ii) for a non-CDFI, having directed at least five percent of its business activities (e.g., investments, revenues, expenses, or other appropriate measures) to serving the Distressed Community identified by the Applicant in each of the three calendar years preceding the date of the applicable NOFA, or having provided at least ten percent of its business activities in said Distressed Community in at least one of the three calendar years preceding the date of 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 including, for example, application contents, further qualifications of Qualified Activities, Priority Factors, related policy directives, and any restrictions on Bank Enterprise Award amounts;

(kk) *Priority Factor* means a numeric value assigned to each type of activity within each category of Qualified Activity, as may be established by the Fund in the applicable NOFA. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent

of benefits accruing to the Distressed Community for each type of activity;

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

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

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

(oo) *Service Activities* means the following activities that are carried out by the Applicant: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products;

(pp) *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) or have gross annual revenues of \$1 million or less;

(qq) *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;

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

(ss) *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 Residents, as may be specified by the Fund in the applicable NOFA; and

(tt) *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. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is Integrally Involved in a Distressed Community. If an Applicant proposes to carry out CDFI Support Activities, Service Activities, or Distressed Community Financing Activities, the Applicant may designate different Distressed Communities for each category of activity.

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

(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

(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 most recent decennial census for which data is available;

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

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

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

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements set forth in paragraph (b) of this section; or

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

(d) *Designation and notification process.* The Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

**§ 1806.201 Measuring and Reporting Qualified Activities.**

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

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

seeking a Bank Enterprise Award for Distressed Community Financing Activities only, it should report only its activities for the Distressed Community Financing Activities category.

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

(2) Exception. An Applicant may elect not to report each type of activity within the Service Activities category.

(c) *Area served.* Service Activities and Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(1) Undertaken in the Distressed Community; or

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

(d) *Limitations.*

(1) Low-Income Housing Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

(2) New Markets Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

(3) Loan Renewals. Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award if, such activity has matured and is then renewed.

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

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

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

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

(i) The Applicant shall calculate the net change in deposits during the Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Applicant shall calculate the net change in such deposits during the Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

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

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

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

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

(2) Constitutes a legally binding agreement between the Applicant and a

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

(3) An initial cash disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction (as determined by the Fund) unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the Fund.

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

#### **§ 1806.202 Estimated award amounts.**

(a) *General.* An Applicant shall calculate an estimated award amount that it shall submit to the Fund for consideration for a Bank Enterprise Award.

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

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

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

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

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

actual award amount for which such Applicant is eligible.

#### **§ 1806.203 Selection Process, actual award amounts.**

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

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

(c) *Priority of Awards.* The Fund will rank Applicants in each category of Qualified Activity according to the priorities described in this paragraph (c). All Applicants in the first priority category will be selected for Bank Enterprise Awards before Applicants in the second priority category. All Applicants in the first and second priority categories will be selected for Bank Enterprise Awards before Applicants in the third priority category. Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds.

(1) *First priority.* If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities, ranked in the order set forth in the applicable NOFA.

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

(3) *Third Priority.* If the amount of funds available during a funding round is sufficient for all CDFI Related Activities and all Distressed Community Financing Activities, but insufficient for all remaining estimated award amounts,



third priority will be given to Applicants that propose to engage in Service Activities, ranked in the order set forth in the applicable NOFA.

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

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

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

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

(3) As otherwise authorized by the Act.

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

#### **§ 1806.204 Applications for Bank Enterprise Awards.**

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

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

(1) A completed worksheet that reports the increases in Qualified Activities actually carried out during the Baseline and Assessment Period. If an Applicant has merged with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that reports the activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed;

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

disbursement, and final disbursement of the instrument;

(3) With respect to:

(i) All CDFI Related Activities; and

(ii) Distressed Community Financing Activities where the original amount of the value of the activity is \$250,000 or greater, documentation that meets the conditions described in § 1806.201(f);

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

(5) Certifications that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period; and that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

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

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

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

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

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

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

(2) Comply with such other terms and conditions (including recordkeeping 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, bar the Awardee and/or its Affiliates from applying for an award from the Fund for a period to be decided by the Fund in its sole discretion, and pursue any other available legal remedies.

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

(d) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund will provide the Awardee with written notice of the proposed sanction and an opportunity to 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.

##### **§ 1806.302 Compliance with government requirements.**

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

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

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

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

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

statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

**§ 1806.305 Retention of records.**

An Awardee shall comply with all record retention requirements as set

forth in OMB Circular A-110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 2003.

**Tony T. Brown,**

*Director, Community Development Financial Institutions Fund.*

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