



Federal Register

**Friday,
January 30, 2009**

Part IV

Department of the Treasury

Community Development Financial Institutions Fund

**12 CFR Part 1806
Notice of Funds Availability; Notice; Bank
Enterprise Award Program; Interim Rule**

DEPARTMENT OF THE TREASURY**Community Development Financial Institutions Fund****Notice of Funds Availability**

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting applications for the FY 2009 funding round of the Bank Enterprise Award (BEA) Program.

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.021.

Dates: Applications for the FY 2009 funding round must be received by 11:59 p.m. ET on March 13, 2009. Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOFA. Applications received after 11:59 p.m. ET on the applicable deadline will be rejected.

Executive Summary: This NOFA is issued in connection with the FY 2009 funding round of the BEA Program. Through the BEA Program, the Community Development Financial Institutions Fund (the Fund) encourages Insured Depository Institutions to increase their levels of loans, investments, services, and technical assistance within Distressed Communities, and financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance, during a specified period. Actual funding for this program is contingent upon available resources. Publication of this NOFA does not obligate the Fund or the Department of the Treasury to make any award or to obligate any available funds.

I. Funding Opportunity Description**A. Baseline Period and Assessment Period Dates**

A BEA Program award is based on an Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period. For the FY 2009 funding round, the Baseline Period is calendar year 2007 (January 1, 2007 through December 31, 2007), and the Assessment Period is calendar year 2008 (January 1, 2008 through December 31, 2008).

B. Program Regulations

The regulations governing the BEA Program have been published in this issue of the **Federal Register**, and replace, in their entirety, the regulations found at 12 CFR part 1806 (the Interim Rule or Rule) and provide guidance on

evaluation criteria and other requirements of the BEA Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the application related to this NOFA. Each capitalized term in this NOFA is more fully defined either in the Interim Rule or the application.

C. Qualified Activities

Qualified Activities are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103(nn)). CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities (12 CFR 1806.103(r)). Distressed Community Financing Activities (12 CFR 1806.103(u)) include 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. Service Activities (12 CFR 1806.103(nn)) include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products.

When calculating BEA Program award amounts, the Fund will count only the amount that an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period. Subject to the requirements outlined in Section I. G.1. of this NOFA, in the case of Commercial Real Estate Loans and CDFI Related Activities, the total principal amount of the transaction must be \$10 million or less to be considered a Qualified Activity. Qualified Activities funded with prior funding round Award dollars shall not constitute a Qualified Activity for the purposes of calculating or receiving an Award.

D. Designation of Distressed Community

An Applicant applying for a BEA Program award for carrying out Distressed Community Financing Activities or Services Activities must designate one or more Distressed Communities. Each CDFI Partner that is the recipient of CDFI Support Activities from an Applicant must designate a Distressed Community. The CDFI Partner can identify a different Distressed Community than the Applicant. Applicants providing Equity Investments to a CDFI, and CDFI Partners that receive Equity Investments, are not required to

designate Distressed Communities. Please note that a Distressed Community as defined by the BEA Program is not necessarily the same as an Investment Area as defined by the CDFI Program, or a Low-Income Community as defined by the New Markets Tax Credit (NMTC) Program.

1. Definition of Distressed

Community: A Distressed Community must meet certain minimum geographic area and distress requirements, which are defined in the Interim Rule at 12 CFR 1806.103(t) and more fully described in 12 CFR 1806.200.

2. Designation of Distressed

Community: An Applicant or CDFI Partner (as appropriate) shall designate an area as a Distressed Community by:

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

(b) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (1) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

An Applicant engaging in Distressed Community Financing Activities or Service Activities designates a Distressed Community by submitting a Map of the Distressed Community as described in the applicable BEA Program application. A CDFI Partner designates a Distressed Community by submitting a Map of the Distressed Community as described in the applicable BEA Program application.

Applicants and CDFI Partners must use the CDFI Fund Information Mapping System (CIMS) to designate Distressed Communities. CIMS is accessed through *myCDFIFund* and contains step-by-step instructions on how to create and print the aforementioned Map of the Distressed Community. *MyCDFIFund* is an electronic interface that is accessed through the Fund's Web site (www.cdfifund.gov). Instructions for registering with *myCDFIFund* are available on the Fund's Web site. If you have any questions or problems with registering, please contact the CDFI Fund IT HelpDesk by telephone at (202) 622-2455, or by e-mail to ITHelpDesk@cdfi.treas.gov.

E. CDFI Related Activities

CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners. In addition to regulatory requirements, this NOFA provides the following:

1. *Eligible CDFI Partner:* CDFI Partner is defined as a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant (12 CFR 1806.103(p)). For the purposes of this NOFA, an eligible CDFI Partner is an entity that has been certified as a CDFI as of the end of the applicable Assessment Period.

2. *Limitations on eligible Qualified Activities provided to certain CDFI Partners:* An Applicant that is also a CDFI cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

3. *Certificates of Deposit:* Section 1806.103(r) of the Interim Rule states that any certificate of deposit placed by an Applicant or its Subsidiary in a CDFI that is a bank, thrift, or credit union must be: (i) Uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the Fund.

(a) For purposes of this NOFA, "materially below market interest rate" is defined as an annual percentage rate that does not exceed 100 percent of yields on Treasury securities at constant maturity as interpolated by Treasury from the daily yield curve and available on the Treasury Web site at www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml. For example, for a three-year certificate of deposit, Applicants should use the three-year rate U.S. Government securities, Treasury Yield Curve Rate posted for that business day. The Treasury updates the Web site daily at approximately 5:30 p.m. ET. Certificates of deposit placed prior to that time may use the rate posted for the previous business day. The annual percentage rate on a certificate of deposit should be compounded quarterly, semi-annually, or annually. In addition, Applicants should determine whether a certificate of deposit is insured based on the total amount that the Applicant or its Subsidiary has on deposit on the day the certificate of deposit is placed. The Applicant must note, in its BEA Program application, whether the certificate of deposit is insured or uninsured.

(b) For purposes of this NOFA, a deposit placed by an Applicant directly with a CDFI Partner that participates in a deposit network or service may be treated as eligible under this NOFA if it otherwise meets the criteria for deposits in 1806.103(r) and the CDFI Partner retains the full amount of the initial

deposit or an amount equivalent to the full amount of the initial deposit through a deposit network exchange transaction.

F. *Equity-Like Loans*

An Equity-Like Loan is 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, as such characteristics may be specified by the Fund (12 CFR 1806.103(z)). For purposes of this NOFA, Equity-Like Loans must meet the following characteristics:

1. At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;

2. Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

3. Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and

4. The loan must be subordinated to all other debt except for other Equity-Like Loans.

Notwithstanding the foregoing, the Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, whether an instrument meets the above-stated characteristics of an Equity-Like Loan. Applicants must submit all documents evidencing loans that they wish to be considered Equity-Like Loans to the Fund for review, no later than 45 days prior to the end of the applicable Assessment Period. The Fund will not redraft instruments, provide language for Applicants, or render legal opinions related to Equity-Like Loans. However, the Fund, in its sole discretion, may comment as to the consistency of a proposed instrument with the above-stated Equity-Like Loan characteristics. Such information will allow Applicants, if they so choose, to modify the instruments to conform to the program requirements prior to the end of the Assessment Period. The Fund cannot guarantee timely feedback to Applicants that submit the aforementioned documentation less than 45 days prior to the end of the applicable Assessment Period.

G. *Distressed Community Financing Activities and Service Activities*

Distressed Community Financing Activities include 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 (12 CFR 1806.103(u)). In addition to the regulatory requirements, this NOFA provides the following additional requirements.

1. *Commercial Real Estate Loans and related Project Investments:* For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103(l)) and related Project Investments (12 CFR 1806.103(ll)) are generally limited to transactions with a total principal value of \$10 million or less. Notwithstanding the foregoing, the Fund, in its sole discretion, may consider transactions with a total principal value of over \$10 million, subject to review. In such cases, the Fund may request that the Applicant provide a separate narrative, or other information, to demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community.

2. *Reporting certain Financial Services:*

(a) The Fund will value the administrative cost of providing certain Financial Services using the following per unit values:

(i) \$100.00 per account for Targeted Financial Services;

(ii) \$50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

(iii) \$5.00 per check cashing transaction;

(iv) \$25,000 per new ATM installed at a location in a Distressed Community;

(v) \$2,500 per ATM operated at a location in a Distressed Community;

(vi) \$250,000 per new retail bank branch office opened in a Distressed Community; and

(vii) In the case of Applicants engaging in Financial Services activities not described above, the Fund will determine the unit value of such services.

(b) When reporting the opening of a new retail bank branch office, the Applicant must certify that it has not operated a retail branch in the same census tract in which the new retail branch office is being opened in the past three years, and that such new branch will remain in operation for at least the next five years.

(c) Financial Service Activities must be provided by the Applicant to Low- and Moderate-Income Residents. An Applicant may determine the number of

Low- and Moderate-Income individuals who are recipients of Financial Services by either:

- (i) Collecting income data on its Financial Services customers; or
- (ii) Certifying that the Applicant reasonably believes that such customers are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination.

H. Integrally Involved Enterprises: 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.

II. Award Information

A. Award Amounts

Subject to funding availability, the Fund expects that it may award approximately \$20 million for FY 2009 BEA Program awards, in appropriated funds under this NOFA. The Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available. Under this NOFA, the Fund anticipates a maximum award amount of \$500,000 per Applicant. The Fund, in

its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount. The Fund also reserves the right to impose a minimum award amount. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

When calculating award amounts, the Fund will count only the amount that an Applicant reasonably expects to disburse on a transaction within 12 months from the end of the Assessment Period.

B. Types of Awards

BEA Program awards are made in the form of grants.

C. Notice of Award and Award Agreement

Each awardee under this NOFA must sign a Notice of Award and an Award Agreement prior to disbursement by the Fund of award proceeds. The Notice of Award and the Award Agreement contain the terms and conditions of the award. For further information, see Section IX. of this NOFA.

III. Eligibility

A. Eligible Applicants

Eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in 12 U.S.C. 1813(c)(2). An Applicant must be FDIC-insured by December 31, 2008 for the FY 2009 funding round to be eligible for consideration for a BEA Program award under this NOFA.

1. *Prior awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. For purposes of this section, the Fund will consider an Affiliate to be any entity that Controls (as such term is defined in paragraph (g) below) the Applicant, is Controlled by the Applicant or is under common Control with the Applicant (as determined by the Fund) and any entity otherwise identified as an affiliate by the Applicant in its Application under this NOFA. Prior BEA Program awardees and prior awardees of other Fund programs are eligible to apply under this NOFA, except as follows:

(a) *Failure to meet reporting requirements:* The Fund will not

consider an application submitted by an Applicant if the Applicant or its Affiliate is a prior Fund awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award or allocation agreement(s), as of the application deadline(s) of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

(b) *Pending resolution of noncompliance:* If an Applicant that is a prior awardee or allocatee under any Fund program: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if an Affiliate of the Applicant that is a prior Fund awardee or allocatee under any Fund program: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund will consider the applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

(c) *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, award or allocation agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline, the Fund has made a final determination that an Affiliate of the Applicant: (i) Is a prior Fund awardee or allocatee under any Fund program, and (ii) has been determined by the Fund to be in default of a previously executed assistance, award or allocation agreement(s). Such entities will be ineligible to apply for an award pursuant to this NOFA so long as the Applicant's, or its Affiliate's, prior

award or allocation remains in default status or such other time period as specified by the Fund in writing.

(d) *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee or allocatee under any Fund program if, within the 12-month period prior to the application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of the assistance, award or allocation agreement and the Fund has provided written notification of such determination to such Applicant. Further, an entity is not eligible to apply for an award pursuant to this NOFA if, within the 12-month period prior to the application deadline of this NOFA, the Fund has made a final determination that an Affiliate of the Applicant is a prior Fund awardee or allocatee under any Fund program whose award or allocation terminated in default of the assistance, award or allocation agreement and the Fund has provided written notification of such determination to the defaulting entity.

(e) *Undisbursed balances:* For the purposes of this section, "undisbursed funds" is defined as: (i) In the case of prior BEA Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee, and (ii) in the case of prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the awardee.

"Undisbursed funds" does not include (i) tax credit allocation authority allocated through the New Markets Tax Credit Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the awardee as of the application deadline of this NOFA; and (iii) any award funds for an award that has been terminated, expired, rescinded, or deobligated by the Fund.

The Fund will not consider an application submitted by an Applicant that is a prior Fund awardee under any Fund program if the Applicant has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if an

Affiliate of the Applicant is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA. In the case where an Affiliate of the Applicant is a prior Fund awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliates when calculating the amount of undisbursed funds.

(f) For purposes of this NOFA, the term "Control" means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities as defined in 12 CFR 1805.104(mm) of any legal entity, directly or indirectly or acting through one or more other persons; (2) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any legal entity; or (3) the power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any legal entity.

(g) *Contact the Fund:* Accordingly, Applicants that are prior awardees and/or allocatees under any Fund program are advised to: (i) Comply with requirements specified in assistance, award and/or allocation agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports, compliance or disbursement questions should be directed to Compliance & Monitoring Support by e-mail at cme@cdfi.treas.gov; by telephone at (202) 622-6330; by facsimile at (202) 622-6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through March 11, 2009. The Fund will not respond to Applicants' reporting, compliance or disbursement telephone calls or e-mail inquiries that are received after 5 p.m. ET on March 11, 2009.

2. *Cost sharing and matching fund requirements:* Not applicable.

IV. Application and Submission Information

A. Address To Request Application Package

Applicants may submit applications under this NOFA in paper form (except as provided below for the Report of Transactions). Shortly following the publication of this NOFA, the Fund will make the FY 2009 BEA Program application materials available via Grants.gov.

B. Application Content Requirements

Detailed application content requirements are found in the application related to this NOFA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Additional information, including instructions relating to the submission of the application via Grants.gov and supporting documentation, is set forth in further detail in the application. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the EIN. Incomplete applications will be rejected.

An Applicant may not submit more than one application in response to the FY 2009 funding round.

C. Form of Application Submission

Applicants must submit applications under this NOFA via Grants.gov with certain required documentation via paper according to the instructions in the application. Applications sent by facsimile or by e-mail will not be accepted, except in circumstances that the Fund, in its sole discretion, deems acceptable. In order to submit an application via Grants.gov, Applicants must complete a multi-step registration process. Applicants are encouraged to allow at least two to three weeks to complete the registration process.

MyCDFIFund Accounts: All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface by the applicable Application deadline. Failure to register on MyCDFIFund could result in the Fund being unable to accept the application. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact

information in their myCDFIFund accounts. For more information on myCDFIFund, please see the "Frequently Asked Questions" link posted at <https://www.cdfifund.gov/myCDFI/Help/Help.asp>.

D. Application Submission Dates and Times

1. *Grants.gov Applications:* The deadline for receipt of applications via Grants.gov for the FY 2009 funding round is 11:59 p.m. ET on March 13, 2009. The deadline for receipt of paper documentation at the BPD address specified below is 5 p.m. ET, March 17, 2009. Applications and other required documents and other attachments received after the deadline on the applicable date will be rejected. Please note that the document submission deadlines in this NOFA and/or the funding application are strictly enforced. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

V. Intergovernmental Review: Not Applicable

VI. Funding Restrictions: Not Applicable

VII. Addresses

Qualified Activity Documentation and Other Attachments as specified in the applicable BEA Program application must be sent to: CDFI Fund Grants Manager, BEA Program, Bureau of Public Debt, 200 Third Street, Room 10, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480-5450. The Fund will not accept applications in its offices in Washington, DC. Applications and attachments received in the Fund's Washington, DC offices will be rejected.

VIII. Application Review Information

A. Priority Factors

Priority Factors are the numeric values assigned to individual types of activity within a category of Qualified Activity. A Priority Factor represents the Fund's assessment of the degree of difficulty, the extent of innovation (including, for example, pricing), and the extent of benefits accruing to the Distressed Community for each type of activity. The Priority Factor works by multiplying the change in a Qualified Activity by its assigned Priority Factor to achieve a "weighted value." This weighted value of the change would be multiplied by the applicable award

percentage to yield the award amount for that particular activity. For purposes of this NOFA, the Fund is establishing Priority Factors for the Distressed Community Financing Activities category only, as follows:

Qualified activities	Priority factor
Affordable Housing Loans	3.0
Education Loans	3.0
Home Improvement Loans	3.0
Small Business Loans and related Project Investments	3.0
Affordable Housing Development Loans and related Project Investments	2.0
Commercial Real Estate Loans and related Project Investments	2.0

B. Award Percentages, Award Amounts, Selection Process

The Interim Rule describes the process for selecting Applicants to receive BEA Program awards and determining award amounts. Applicants will calculate and request an estimated award amount in accordance with a multiple step procedure that is outlined in the Interim Rule (at 12 CFR 1806.202). As outlined in the Interim Rule at 12 CFR 1806.203, the Fund will determine actual award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and each Applicant's priority ranking. In calculating the increase in Qualified Activities, the Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program award. In some cases, the actual award amount calculated by the Fund may not be the same as the estimated award amount requested by the Applicant.

In the CDFI Related Activities category (except for an Equity Investment or Equity-Like Loan), if an Applicant is a CDFI, such estimated award amount will be equal to 18 percent of the increase in Qualified Activity for the category. If an Applicant is not a CDFI, such estimated award amount will be equal to 6 percent of the increase in Qualified Activity for the category. Notwithstanding the foregoing, for an Applicant that is a CDFI and for an Applicant that is not a CDFI, the award percentage applicable to an Equity Investment, Equity-Like Loan, or Grant in a CDFI shall be 15 percent of the increase in Qualified Activity for the category. For the Distressed Community Financing Activities and Service Activities categories, if an Applicant is a CDFI, such estimated award amount will be equal to 9 percent of the weighted value of the increase in

Qualified Activity for the category. If an Applicant is not a CDFI, such estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

If the amount of funds available during the funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in the Interim Rule at 12 CFR 1806.203(b). *This process gives funding priority to Applicants that undertake activities in the following order:*

1. CDFI Related Activities,
2. Distressed Community Financing Activities, and
3. Service Activities.

Within each category, Applicants will be ranked according to the ratio of the actual award amount calculated by the Fund for the category to the total assets of the Applicant. Within the Distressed Community Financing category as well as the Service Activities category, Applicants that are certified CDFIs will be ranked first, followed by Applicants that have carried out such Distressed Community Financing Activities and Service Activities in a Distressed Community that encompasses an Indian Reservation.

The Fund, in its sole discretion: (i) May adjust the estimated award amount that an Applicant may receive; (ii) may establish a maximum amount that may be awarded to an Applicant; and (iii) reserves the right to limit the amount of an award to any Applicant if the Fund deems it appropriate.

For purposes of calculating award disbursement amounts, the Fund will treat Qualified Activities with a total principal amount of less than \$250,000 as fully disbursed. For all other Qualified Activities, Awardees will have 12 months from the end of the Assessment Period to make disbursements and 18 months from the end of the Assessment Period to submit to the Fund disbursement requests for the corresponding portion of their awards, after which the Fund will rescind and deobligate any outstanding award balance and said outstanding award balance will no longer be available to the Awardee.

The Fund reserves the right to change its eligibility and evaluation criteria and procedures. If said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site.

There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

C. Certain Limitations on Qualified Activities

(a) 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.

(b) 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.

(c) 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 financial assistances consist of a loan that has matured and is then renewed by the Applicant.

(d) Prior BEA Awards. Qualified Activities funded with prior funding round Award dollars shall not constitute a Qualified Activity for the purposes of calculating or receiving an Award.

(e) Prior CDFI Program Awards. No CDFI may receive a BEA Program award for activities funded by a CDFI Program award.

IX. Award Administration Information

A. Notice of Award

The Fund will signify its selection of an Applicant as an Awardee by delivering a signed Notice of Award and Award Agreement to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of an award including, but not limited to, the requirement that an Awardee and the Fund enter into an Award Agreement. The Applicant must execute the Notice of Award and return it to the Fund along with the Award Agreement. The Fund reserves the right, in its sole discretion, to rescind its award and Notice of Award if the Awardee fails to return the Notice of Award or Award Agreement, signed by the Authorized Representative of the Awardee, along

with any other requested documentation, by the deadline set by the Fund.

By executing a Notice of Award, the Awardee agrees that, if information (including administrative errors) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate.

1. *Failure to meet reporting requirements:* If an Applicant, or its Affiliate, is a prior Fund Awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed Assistance, Award or Allocation Agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, until said prior Awardee or Allocatee is current on the reporting requirements in the previously executed Assistance, Award or Allocation Agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or Allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Fund Awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous Assistance, Award, or Allocation agreement, and (ii) the Fund has yet to make a final determination regarding whether or not the entity is in default of its previous Assistance, Award, or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if an Affiliate of the Applicant is a prior Fund Awardee or Allocatee under any Fund

program, and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous Assistance, Award, or Allocation Agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous Assistance, Award, or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds pending full resolution, in the sole determination of the Fund, of the noncompliance. If said prior Awardee or Allocatee is unable to meet this requirement, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that an Applicant that is a prior Fund Awardee or Allocatee under any Fund program is in default of a previously executed Assistance, Award, or Allocation Agreement(s) and has provided written notification of such determination to the Applicant, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds until said prior Awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said Agreement within a timeframe set by the Fund. Further, if, at any time prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that an Affiliate of the Applicant is a prior Fund Awardee or Allocatee under any Fund program, and is in default of a previously executed Assistance, Allocation or Award Agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds until said prior Awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said Agreement within a timeframe set by the Fund. If said prior awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

4. *Termination in default:* If, within the 12-month period prior to entering

into an Award Agreement under this NOFA, the Fund has made a final determination that an Applicant that is a prior Fund Awardee or Allocatee under any Fund program whose Award or Allocation terminated in default of such prior Agreement and the Fund has provided written notification of such determination to such organization, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds. Further, if, within the 12-month period prior to entering into an Award Agreement under this NOFA, the Fund has made a final determination that an Affiliate of the Applicant, is a prior Fund Awardee or Allocatee under any Fund program, and whose Award or Allocation terminated in default of such prior Agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds.

E. Award Agreement

After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of the award; (iii) the approved uses of the award; (iv) performance goals and measures; and (v) reporting requirements for all Awardees. Award Agreements under this NOFA generally will have one-year performance periods. The Award Agreement shall provide that an Awardee shall: (i) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements; (ii) not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements, and (iii) use an amount equivalent to the BEA Award amount for BEA Qualified Activities.

F. Administrative and National Policy Requirements

Not applicable.

G. Reporting and Accounting

1. *Reporting Requirements:* The Fund will collect information, on at least an annual basis, from each Awardee that receives an award over \$50,000 through this NOFA including, but not limited to, an Annual Report that comprises the following components: (i) Institution

Level Report; (ii) Financial Reports (including an OMB A-133 audit, as applicable); and (iii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Award Agreement. If such other entities or signatories are required to provide Institution Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Award Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Award Agreement and to assess the impact of the CDFI Program. All reports must be electronically submitted to the Fund via the Awardee's my CDFIFund account. The Institution Level Report must be submitted through the Fund's Web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS. All other components of the Annual Report may be submitted electronically, as directed, by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives an award over \$50,000 through this NOFA to account for the use of the award. This will require Awardees to establish administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an Award must provide the Fund with the required and complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

X. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through close of business

March 11, 2009 for the FY 2009 funding round.

The Fund will not respond to questions or provide support concerning the application after 5 p.m. ET on March 11, 2009 for the FY 2009 funding round.

Applications and other information regarding the Fund and its programs may be downloaded and printed from the Fund's Web site at www.cdfifund.gov. The Fund will post on its Web site responses to questions of general applicability regarding the BEA Program.

A. Information Technology Support: Technical support can be obtained by calling (202) 622-2455 or by e-mail at ithelpdesk@cdfi.treas.gov. People who have visual or mobility impairments that prevent them from creating a Distressed Community map using the Fund's Web site should call (202) 622-2455 for assistance. These are not toll free numbers.

B. Programmatic Support: If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at cdfihelp@cdfi.treas.gov, by telephone at (202) 622-6355, by facsimile at (202) 622-7754, or by mail at CDFI Fund, 601 13th Street NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. Grants Management Support: If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at grantsmanagement@cdfi.treas.gov, by telephone at (202) 622-8226, by facsimile at (202) 622-9625, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. Compliance and Monitoring Support: If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at cme@cdfi.treas.gov, by telephone at (202) 622-6330, by facsimile at (202) 622-6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. Legal Counsel Support: If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled "How to Request a Legal Review," found on the Fund's Web site at www.cdfifund.gov. Further, if you wish to review the Award Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that

there may be revisions to the Award Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site should not be relied upon for purposes of this NOFA).

F. *Communication with the CDFI Fund:* The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Awardees must use myCDFIFund to submit required reports. The Fund will notify

Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help

documents posted at <https://www.cdfifund.gov/myCDFI/Help/Help.asp>.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: January 15, 2009.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. E9-1576 Filed 1-29-09; 8:45 am]

BILLING CODE 4810-70-P