

**§ 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

## Community Development Financial Institutions Fund

## § 1806.200

(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