

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.