



BILLING CODE 4810-70-P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Bank Enterprise Award (BEA) Program; Programmatic and Administrative Aspects; Public
Comment Request

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury

ACTION: Request for Public Comment

SUMMARY: This notice invites comments from the public on certain programmatic and administrative aspects of the Community Development Financial Institutions Fund's (CDFI Fund) Bank Enterprise Award (BEA) Program, pursuant to the BEA Program regulations set forth at 12 CFR part 1806 (the Interim Rule). All materials submitted will be available for public inspection and copying.

DATES: All comments and submissions must be received by [insert date 60 days from date of publication in the Federal Register]

ADDRESSES: Comments should be sent by mail to: CDFI Fund, BEA Program Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220; by e-mail to bea@cdfi.treas.gov; or by facsimile at (202) 508-0089. This is not a toll free number.

FOR FURTHER INFORMATION: Information regarding the CDFI Fund and its programs may be downloaded from the CDFI Fund's website at <http://www.cdfifund.gov>.

SUPPLEMENTARY INFORMATION: Through the BEA Program, the CDFI Fund encourages Insured Depository Institutions to increase their activities in the form of loans, investments, services, and technical assistance provided within Distressed Communities, as well as investments in Community Development Financial Institutions (CDFIs) through grants, stock

purchases, loans, deposits, and other forms of financial and technical assistance. The increase in these activities is measured from a Baseline Period to an Assessment Period. Each capitalized term used in this Request for Public Comments is more fully defined either in the Interim Rule or the Notice of Funds Availability for the FY 2013 BEA Program award round (Federal Register/ Vol. 78, No.109) (the NOFA). Through this notice, the CDFI Fund is seeking comments from the public regarding certain programmatic and administrative aspects of the CDFI Fund's BEA Program. Commentators are encouraged to consider, at a minimum, the following topics:

I. ELIGIBILITY

A. CRA Rating: The Community Reinvestment Act (CRA) encourages and examines efforts to service the banking needs of low- and moderate-income communities. The CDFI Fund considers a financial institution's CRA rating a key indicator of its efforts to serve the communities that it does business in and the effectiveness of those efforts in providing access to financial products and services to businesses and residents of those communities, including low-and-moderate income communities.

As stated in Section VII "Application Review Information" of the NOFA, the CDFI Fund may choose not to approve a BEA Program award at the time of application if the Applicant and/or its affiliates' most recent overall CRA assessment rating is below "Satisfactory." This determination is made during the review of the application.

The CDFI Fund is considering making this an "Eligibility" requirement (Section III of the NOFA). If implemented, Section III of the NOFA would inform prospective Applicants that a CRA rating of below "Satisfactory" during the Baseline Period or the Assessment Period of the applicable BEA Program award round will result in ineligibility.

1. Should the CDFI Fund consider an Applicant ineligible if the Applicant's CRA rating is below "Satisfactory" and the CRA examination date was within the applicable Baseline or Assessment Period? If so, please indicate why. If not, please provide a specific reason why not.
2. Should the CDFI Fund consider an Applicant ineligible if the Applicant's most recent CRA rating is below "Satisfactory" but the CRA examination date was prior to the applicable Baseline or Assessment Period? If so, please indicate why. If not, please provide a specific reason why not.
3. Should the CDFI Fund perform additional due diligence to obtain an update on the status or progress made by the Applicant to improve its CRA rating prior to making an eligibility determination? If so, in which of the two scenarios above should additional due diligence be performed? Should that information be self-reported by the Applicant, or provided directly by its Appropriate Federal Banking Regulatory Agency?

B. Financial Health: The BEA Program requires award recipients to deploy an amount equivalent to the award received in additional Qualified Activities in the calendar year following the receipt of the award. This requirement ensures that all BEA Program award proceeds are directly invested in distressed communities. Award recipients must remain in operation in order for their BEA Program award proceeds to be successfully deployed in Distressed Communities. Therefore, the financial health of an Applicant is an important factor in making an award determination. The CDFI Fund considers an audit opinion a key indicator of the financial health of an Applicant.

As stated in Section VII "Application Review Information" of the NOFA, the CDFI Fund may choose not to approve a BEA Program Award at the time of application if the Applicant received

a going concern opinion on its most recent audit. This determination is made during the review of the application.

The CDFI Fund is considering making this an “Eligibility” requirement (Section III of the NOFA). If implemented, Section III of the NOFA would inform prospective Applicants that a going concern audit opinion during the Baseline Period or the Assessment Period of the applicable BEA Program award round will result in ineligibility.

1. Should the CDFI Fund consider an Applicant ineligible to apply for a BEA Program award if the Applicant received a going concern on its most recent audit report? If not, please provide a specific reason why not.
2. Is there additional financial health information that the CDFI Fund should consider in making eligibility determinations? If so, please describe.

II. ADDITIONAL PROGRAM CONSIDERATIONS

A. Integrally Involved Certified-CDFIs: The Interim Rule defines CDFI Support Activity as assistance provided by an Applicant or its Subsidiary to a certified CDFI that meets criteria set forth by the CDFI Fund in the applicable NOFA, that is Integrally Involved in a Distressed Community. The NOFA defines Integrally Involved as having provided: (i) at least 10 percent of financial transactions or dollars transacted (e.g., loans or Equity Investments as defined in 12 CFR 1805.104(t)), or 10 percent of Development Service activities (as defined in 12 CFR 1805.104(s)), 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, (ii) having transacted at least 25 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 (iii) demonstrated that it has attained at least 10 percent of market share for

a particular product in said Distressed Community (such as at least 10 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.

1. Should the current definition of Integrally Involved be revised or replaced? If so, how should the CDFI Fund define Integrally Involved?
2. What other factors should the CDFI Fund consider when determining an updated definition of Integrally Involved?

B. Updating the Types of BEA Qualified Activities: The CDFI Fund is considering updating the types of activities eligible for BEA Program awards. This includes the specific types of activities currently considered eligible in the CDFI-Related, Distressed Community Financing, and Service Activity categories. The following activities are eligible CDFI-Related Activities: Equity-Like Loans (ELL), Grants (CG), Loans (LNS), CDFI Deposits/Shares (DS), and Technical Assistance (TA). The following activities are eligible Distressed Community Financing Activities:

Affordable Home Mortgage Loans (AHM), Affordable Housing Development Loans and Project Investments (AHD), Home Improvement Loans (HIL), Education Loans (EDU), and Commercial Real Estate Loans and Project Investments (CRE). The following activities are eligible Service Activities: Deposits (D), Community Services (CS), Financial Services (FS), Targeted Financial Services (TFS), and Targeted Retail Savings/Investment Products (TSP).

1. Should the CDFI Fund revise, replace, or add to the existing types of CDFI-Related, Distressed Community Financing or Service Activities to include financial products or services relevant to the current economic environment? If so, please indicate the specific type of activity that should be considered, the reasons why it should be considered, and to the

extent possible, the benefits of the activity to residents of Distressed Communities. If the suggestion is that a particular activity type be revised or replaced, please explain why.

C. Pay for Success: The CDFI Fund has received recent inquiries about broadening BEA Qualified Activities to include “Pay for Success” activities. The objective of the Pay for Success initiative is to improve social outcomes while more effectively allocating public resources, paying for services only when the desired results of social outcomes are achieved. Examples of social outcomes include: academic programs for disadvantaged youth that accelerate academic gains; programs that reduce recidivism rates; and elderly care services that reduce the number of elderly individuals placed in costly nursing home facilities. Pay for Success has been part of the President’s annual budget since FY 2012. Pay for Success activities are typically structured through contracts between state agencies and social service providers. A financial institution can participate in Pay for Success activities by providing the funding component. The financial institution would be reimbursed by the federal government only if the agreed-upon outcomes are achieved and verified by an external evaluator. Since the anticipated social outcomes are achieved over a number of years, Pay for Success contracts are typically multiple-year commitments.

If a BEA applicant funds a certified CDFI that administers or supports a Pay for Success activity, the activity could qualify as a CDFI-related activity under the current Interim Rule. The CDFI Fund is considering revising the Distressed Community Financing Activities category to include the funding component of Pay for Success activities by FDIC-insured financial institutions as a qualified activity. An example of a Pay for Success activity which could qualify in the Distressed Community Financing Activities category, is a loan or investment made by an FDIC-insured financial institution to an organization that funds a Pay for Success activity located in a

BEA Distressed Community. The Applicant would still need to be a FDIC-insured financial institution, and the borrower would still need to be located in a BEA Distressed Community in order for the transaction to qualify. Disbursement of a Pay for Success award would be contingent upon verification that the agreed upon social outcomes for which the award determination was based have been achieved.

1. Should the CDFI Fund add Pay for Success activities as an eligible Distressed Community Financing Activity? If so, please indicate why. If not, please indicate why not.
2. If Pay for Success activities are added, should the CDFI Fund cap the amount of BEA Program awards related to these activities? If so, explain why and be specific regarding the amount in award dollars and/or percentage.
3. Would the addition of Pay for Success activities as an eligible Distressed Community Financing Activity incentivize financial institutions to increase the funding of Pay For Success activities?
4. Do financial institutions currently fund Pay for Success activities? If so, what are the attributes of the financial institutions? For example, are they predominately certified-CDFIs, community banks, minority depository institutions, small banks, large banks, etc.?

D. Limitations on Loans or Investments to Certain Types of Businesses: The CDFI Fund is considering prohibiting loans or investments to certain types of businesses that otherwise meet other eligibility criteria from qualifying for the BEA Program.

1. Should the CDFI Fund prohibit loans or investments to certain types of businesses that otherwise meet other BEA Program eligibility requirements from qualifying for the BEA Program? For example, should the CDFI Fund consider a loan to a liquor store, gambling facility, etc. that otherwise meets other BEA Program eligibility requirements, an ineligible

activity? If so, to which types of businesses should loans or investments be considered ineligible? If not, please provide a specific reason why not. Also, please discuss the positive or negative impact that loans or investments to these types of businesses may have on a Distressed Community.

E. Award Size: The CDFI Fund has received feedback regarding the continued reduction in the maximum BEA Program award size. Over the past three years, appropriated funds for the BEA Program have decreased from \$25 million in FY 2010 to approximately \$17.1 million in FY 2013. The CDFI Fund has continued to make an effort to award as many Applicants as possible with available appropriations. In order to do so, the CDFI Fund has lowered the award cap in the last three BEA Program award rounds, reducing the maximum award amount an individual Applicant can receive. For example, in FY 2010 the BEA Program was appropriated \$25 million and the award cap was \$600,000. In FY 2011, the BEA Program was appropriated \$22 million and the award cap was \$500,000. In FY 2012, the BEA Program was appropriated \$18 million and the award cap was \$415,000. The CDFI Fund is particularly interested in knowing how impactful BEA Program awards are to: community banks, certified CDFIs, minority depository institutions, and Small Banks based on CRA Asset Size Classification (assets of less than \$296 million as of 12/31/2012).

1. How impactful are BEA Program awards to the recipient financial institutions?
2. Should the CDFI Fund consider making fewer, significantly larger awards? For example, with an appropriation of \$18 million, the CDFI Fund could make 18 awards of \$1 million each.
3. What other factors should the CDFI Fund consider regarding the size of BEA Program awards?

III. REPORTING AND SUPPORTING DOCUMENTATION

A. Worksheet 2: BEA Report of Transactions: The CDFI Fund requires BEA Applicants to complete and submit Worksheet 2: BEA Report of Transactions as part of the BEA application. Worksheet 2: BEA Report of Transactions captures the transaction data for the transactions an Applicant included in its application. The data currently captured is: (1) Name of Borrower/Investee/Service Provider; (2) Total Dollar Value or Amount of Transactions; (3) Amount Disbursed to Date; (4) Street Address; (5) City; (6) State; (7) Zip; (8) Census Tract; (9) Date of Execution; (10) Date of Initial Disbursement; (11) Date of Final Disbursement; (12) Type of Activity; and (13) Impact.

In addition to the information currently captured, the CDFI Fund is considering adding two columns to Worksheet 2: BEA Report of Transactions: (1) Description of Business Financed; and (2) NAICS Code of the Business Financed. These two columns would only apply to loans or investments provided to businesses.

1. Would the addition of these columns significantly increase the burden on Applicants or result in any potential issues that the CDFI Fund may not have considered?
2. Should the supporting documentation requirements apply to every transaction, to only certain specific transaction types, or to transactions of a certain amount?

B. Supporting Documentation Provided by Applicants: The CDFI Fund currently requires Applicants to provide supporting documentation for transactions greater than or equal to \$250,000. The CDFI Fund is considering changing the supporting documentation requirements.

1. Should the CDFI Fund require Applicants to provide supporting documentation for loans or investments of less than \$250,000? If so, what type of supporting documentation should be required?

2. Would lowering the threshold amount for requiring supporting documentation requirements significantly increase the burden on Applicants or result in any potential issues that the CDFI Fund may not have considered?
3. Should the supporting documentation requirements apply to every transaction, to only certain specific transaction types, or to transactions of a certain amount?

IV. OTHER

A. General Feedback: The CDFI Fund would also like to obtain general feedback on the BEA Program and recognizes that there are other topics that may not have been addressed in the questions above, but that are important to consider. This information is especially important given that the BEA Program statute is over 12 years old and the Program regulations are over three years old. Please provide any general feedback on any aspect of the BEA Program, including but not limited to, program design, direction, impacts, performance measures, etc.

AUTHORITY: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321; 12 CFR part 1806.

Dated: October 23, 2013

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2013-25622 Filed 10/28/2013 at 8:45 am; Publication Date: 10/29/2013]