

Memorandum

From: Clifton D. Berry

To: The Federal Reserve Board
The Federal Deposit Insurance Corporation
The Office of the Comptroller of the Currency
The Office of Thrift Supervision

Subject: **Public Comments re: Updating CRA regulations and procedures**
Offered at the Chicago Federal Reserve Bank

Date: August 12, 2010

Thank you for the opportunity to offer comments regarding how you might update the CRA regulations. And I want to thank the FDIC in particular for the seminal work you have done through your “Survey of Banks’ Efforts to Serve the Unbanked and Underbanked” to highlight the extent to which tens of millions of Americans are unbanked or underbanked and lack access to the mainstream financial system despite decades of activity under the CRA, and despite the fact that consolidation in the industry has continued to the point where 10 financial institutions in the United States control 75% of the country’s total banking assets.

My comments will address the following areas in order:

1. Geographic Coverage
2. Affiliate Activities
3. Small Business and Consumer Lending
4. Access to Banking Services, and
5. Ratings and Incentives

GEOGRAPHIC COVERAGE

Best approaches to evaluating geographic coverage

- Require banks to achieve a market share by product and service type among unbanked and underbanked consumers greater than or equal to their share of the market in their CRA assessment area.

- Require banks to submit written business plans for obtaining market share among unbanked and underbanked consumers and measure performance against plan as the basis for CRA ratings.

Note: Existing CRA assessment areas should be the baseline geographies for planning the achievement of market share goals.

Differences in geographic scope for traditional institutions vs. institutions with limited or no physical facilities

- There should be no difference. Performance against plan should be the evaluation premise however it is achieved.

Differences in geographic scope for small local institutions vs. institutions with a nationwide, multistate, or statewide customer bases

- Small local institutions should be required to achieve a market share by product and service type among unbanked and underbanked consumers greater than or equal to their share of the market in their CRA assessment area, they should submit written business plans to their regulator for achieving this goal, and they should be evaluated based upon performance against plan.
- Institutions having national, multistate regional, or statewide customer bases should be required to achieve a market share by product and service type among unbanked and underbanked consumers greater than or equal to their share of the market in **each** of their CRA Assessment Areas, they should submit written business plans to their regulator for achieving this goal, and they should be evaluated based upon performance against plan for each assessment area.

Adapting CRA evaluations of urban and rural communities

- They should not be adapted. Evaluations should always be performance based as measured by the institutions business plan for achieving goals. The agencies should approve these plans in advance.

AFFILIATE ACTIVITIES

Revising the regulations to require that examiners routinely consider activities by affiliates

- The agencies should **not** revise the regulation to routinely consider activities by affiliates. In planning the achievement of market share among unbanked and underbanked consumers institutions should identify all affiliates that will assist in achieving the goal

and only the activities of those affiliates should be considered in the context of the business plan and plan evaluation.

SMALL BUSINESS AND CONSUMER LENDING EVALUATIONS AND DATA

Revising the evaluation of and/or data requirements

- Evaluations should be changed to measure an institution's performance against the goals of its' approved business plan for achieving market share among unbanked and underbanked consumers by product and service type in its' CRA Assessment Area.
- Data collection should mirror the Home Mortgage Disclosure Act (HMDA) and should include MBE and WBE certification data for these customers by reference.
- Evaluations of activities and product design should be eliminated.

ACCESS TO BANKING SERVICES

Consideration under the CRA

- The achievement of market share among unbanked and underbanked consumers by product and service type should be the primary basis for grading an institution's CRA performance.

Changes that would encourage financial institutions to expand access to unbanked and underbanked consumers, etc.

- Require that written business plans be filed by each financial institution to include goals and timelines for achieving market share among unbanked and underbanked consumers greater than or equal to their share of the market by product and service type in their CRA Assessment Area.

Revisions to CRA to include additional regulatory incentives to provide access to services for historically underserved and distressed markets

- Regulated depositories failing to achieve market share goals by product and service type in accordance with their business plan should be subject to a higher degree of supervision and should be subject to challenge regarding mergers and acquisitions and the establishment of new branches.
- National, multistate, and statewide institutions failing to achieve market share goals by product and service type in accordance with their business plan for each of their CRA Assessment Areas should be subject to challenge regarding mergers and acquisitions and the establishment of new branches.

- In the most egregious cases of non compliance institutions should be required to divest banking assets in CRA Assessment Areas where they have failed to comply on a basis that is favorable to market competitors.

RATINGS AND INCENTIVES

Opportunities to improve the rules governing CRA ratings to differentiate strong, mediocre, and inadequate CRA performance more consistently and effectively

- Base CRA performance ratings on performance against plan for achieving market share among unbanked and underbanked consumers in each CRA Assessment Area.

Assessing the qualitative measures of an institution's performance

- Qualitative measures of an institution's performance should continue to be evaluated on the current basis but performance in these areas should not constitute better than substandard performance on the part of any institution not meeting their market share goals relative to unbanked and underbanked consumers.

Regulatory incentives that could be considered to encourage and recognize superior CRA performance.

- Preferred status such as the right of first refusal in acquiring banking assets for sale or disposition.
- Tax credits, the proceeds of which would be reinvested in achieving market share goals by product and service type for unbanked and underbanked consumers.
- Preferred status in accessing Bank Enterprise Award Program funds and Financial Assistance funds from the Community Development Financial Institutions Fund.

This concludes my comments.