

B&B REVIEW

Financial Services and Transactions

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CRA IS ALIVE AND WELL -- EVEN IN THESE DIFFICULT TIMES

INTRODUCTION

Banks may be tempted to help solve their current difficulties on both the asset and liability sides of their balance sheets by cutting back on lending and other activities that would otherwise be undertaken to satisfy the requirements of the Community Reinvestment Act (CRA). Indeed, some CRA critics have argued that CRA-directed lending actually caused or contributed significantly to the asset quality issues at banks over the past two years. Such critics would argue that the most efficient and logical means of improving banks' financial health is to cut back on CRA activities.

Listening to such critics would be a mistake, however, because CRA is alive and well even when banking supervisors are focused more than ever before on ensuring that banks adhere to safe and sound banking practices because of the recent difficulties in the industry.

President Obama's June 2009 legislative proposal for a Consumer Financial Protection Agency contemplated that the new agency would take over CRA enforcement from the existing banking agencies so as to enhance, not lessen, regulatory focus on the law. The version of the CFPB legislation that was proposed by House Financial Services Committee Chairman Barney Frank would keep CRA enforcement at the existing banking agencies but do nothing to reduce the requirements of the law. A separate House bill introduced by Rep. Eddie Bernice Johnson (D-Texas) would actually expand

CRA to other entities such as mortgage bankers and credit unions.

The banking agencies themselves have also signaled that they intend to continue to hold the collective feet of the banking industry to the CRA fire. The most recent issue of "Supervisory Insights" from the Federal Deposit Insurance Corporation includes an article designed to remind banks of their CRA obligations even in tough times, entitled, "Not Just Adding Up the Numbers: Achieving CRA Objectives in Challenging Times."

Set forth below are the primary themes that run through the FDIC's CRA guidance in the "Supervisory Insights" article.

CRA ACTIVITIES MUST NOT BE DISPROPORTIONATELY AFFECTED

The FDIC instructs examiners to consider the capacity and constraints of a bank, "particularly its financial condition." However, the agency states that even a remedial action against a bank based on safety and soundness does not justify a reduction in CRA lending and other activities. Institutions are advised that a disproportionate reduction in attention to low- to moderate-income (LMI) areas or borrowers or small business lending, or an increase in out-of-area lending "warrants follow up with management" and might result in a less than Satisfactory CRA performance rating.

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QUALITY AND QUANTITY

Recognizing concerns of reduced loan volume, regulators are placing additional emphasis on the quality of CRA lending. The FDIC guidance makes it clear that banks cannot substitute a high volume of lending that only marginally satisfies CRA requirements for lending that truly satisfies the quality requirements of CRA for meeting the banking needs of LMI communities. They suggest a number of ways that banks can ensure that their lending and other activities are not only of high CRA quality but are also safe and sound banking practices.

For example, the FDIC encourages meaningful consultation and collaboration with community development leaders in a bank's assessment areas. The agency notes that it expects more than mere membership on a community organization board, but rather looks for a bank to exhibit leadership in designing and structuring the most appropriate financing for a particular project.

The FDIC acknowledges that size matters for CRA compliance. Larger banks are expected to use their financial commitments for particular projects to "leverage support from other public and private participants." Conversely, smaller banks should work to maintain good working relationships with larger banks' community development professionals so as to be in positions to participate in larger CRA-qualified projects to the extent of their financial capability.

BE ATTUNED TO GOVERNMENT PROGRAMS

The FDIC recognizes that a variety of economic development programs have begun at both the federal and state level. The agency encourages using new government programs or adding or adapting products to be consistent with new programs.

For example, a bank would be considered responsive to the LMI segments of its community if it increased its role in mortgage lending guaranteed by the Federal Housing Administration, Rural Housing Administration or state agencies. For Alabama banks, federal banking supervisors would likely look positively on working with the Alabama

Housing Finance Authority to provide affordable housing in LMI geographies. Similarly, a Mississippi bank could expect its federal regulators to view a transaction with the Mississippi Home Corporation in a favorable light.

Likewise, a bank would be showing best CRA practices if it identified emerging community development credit needs in conjunction with non-financial economic recovery, or "stimulus," programs. Several such programs are directed at geographic areas that might be LMI geographies, such as programs to increase broadband Internet access in rural areas, programs to ensure that health care providers adopt electronic health records and programs to retrain workers in declining industries. Good relationships with larger banks and with community development groups would help ensure that a bank was aware of lending opportunities related to such economic recovery programs.

LOAN MODIFICATIONS AND FORECLOSURES

Finally, the FDIC's guidance in "*Supervisory Insights*" makes it clear that following the federal government's admonitions to keep consumers in their homes through loan modifications is consistent with CRA's goals. For example, a bank should document when it modifies loans to LMI borrowers and in LMI areas so as to preserve home ownership. This is also a key area where banks benefit from demonstrating that they have consulted with state and local non-profit organizations focused on foreclosure prevention.