Institutions with Strategic Plans

The regulations permit any institution to develop, and submit for approval by its primary supervisory agency, a strategic plan (Plan) for addressing its responsibilities with respect to CRA. A strategic plan enables the institution to tailor its CRA goals and objectives to address the needs of its community consistent with its business strategy, operational focus, and capacity and constraints. The required contents of the strategic plan and the FDIC's criteria for evaluating a strategic plan submission are set forth in Part 345 of the FDIC's regulations; specifically, at 12 C.F.R. §345.27.

Public Review and Comment

An important component in preparing a strategic plan is the requirement that the process include public review and comment. The plan must include a copy of the public notice and the name(s) of the newspaper of general circulation in which the notice was published for each assessment area covered by the plan. The institution should provide verification in the plan that comments were solicited for a minimum period of 30 days. Copies of all written comments received during the formal comment period must be submitted. If the final plan submitted to the FDIC is different from the initial plan released for comment, a copy of that initial plan must also be submitted with the request. During the FDIC's review process, the institution may need to revise the plan to respond to agency requests for additional information. These changes do not need to be released again for public comment unless they significantly alter the content of the original submission.

The institution can obtain public input in a variety of ways, such as holding meetings with community groups and other interested parties, seeking comments from customers through branch notifications, and mailing statement stuffers to customers.

The institution should also include copies of its response to the public comments. The public comments and the institution's response(s) will be reviewed by the FDIC to determine whether the institution considered the input from the community, the degree of support for the institutions goals, and the appropriateness of the goals.

Assessment Area

An institution must define assessment area(s) and list them in the plan. Only whole geographies should be included: census tracts, block numbering areas or block groups. The assessment area should consist of one or more metropolitan statistical areas (MSAs) or one or more contiguous political subdivisions (e.g., counties, cities or towns); however, the assessment area may be adjusted if including the political subdivision would create a larger area than the institution can be reasonably expected to serve. Whole census tracts and block numbering areas should be included even if these geographies cross MSA and political subdivision boundaries.

The institution should include those geographies in which it has its main office, branches and deposit-taking remote service facilities such as ATMs and point-of-sale terminals. The institution should also include the surrounding geographies in which it has originated or purchased a substantial amount of its loan portfolio, including home mortgage, small business and small farm loans, as well as any consumer loans, on which the institution chooses to have its performance assessed.

Measurable Goals

Each institution must determine not only which goals to include in the plan but also the levels at which these goals must be set to justify the proposed ratings. When an institution selects the strategic plan option, it should refer to both the examination procedures and those portions of the CRA regulations that establish the performance criteria for lending, investments, and services.

Examiners evaluate a strategic plan's measurable goals on the following criteria:

- Extent and breadth of lending or lending-related activities, including geographic and borrower distribution of loans.
- Extent of community development lending.
- Use of innovative or flexible lending practices.
- Amount, innovativeness, complexity and responsiveness of qualified investments.
- Availability and effectiveness of retail services and the extent and innovativeness of community development services.

The regulations state that the plan should include specific measurable goals to meet the credit needs of the assessment area, particularly the needs of low- and moderate-income geographies and individuals, through lending, investments and services. Generally, the plan should emphasize lending and lending-related activity. Nonetheless, a different emphasis may still be appropriate, provided that this emphasis is clearly explained and substantiated based on the characteristics and needs of the assessment area and the institution's financial capacity, product offerings and business focus. For example, there may be demonstrable intense loan competition within an assessment area, so the institution is concentrating its efforts on making qualified investments and providing community development services.

With respect to affiliates, the plan must include the names of each institution joining in the plan and a description of how it is affiliated with the submitting institution. The FDIC will approve a joint plan only if the plan provides measurable goals for each depository institution. Activities may be allocated among institutions, at their option, provided that the same activities are not counted for more than one institution. A joint

plan must appropriately address the credit needs of each institution's assessment area(s).

If a proposed strategic plan is submitted on behalf of more than one institution, each institution must receive the approval of its own supervisory agency for those portions of the plan relating to that institution's CRA responsibilities. If a strategic plan covering multiple institutions must be approved by more than one regulatory agency, each agency will issue a decision approving or denying the request with respect to the institution(s) for which that agency has primary supervisory responsibility.

Determining the adequacy of the projected goals necessitates that they be well-supported by facts and information presented in the performance context portion of the plan. Although past performance does indicate the institution's ability to attain a certain goal, it does not necessarily denote whether the goal reflects the specific needs of the assessment area or is consistent with economic or market forecasts for the geographic area served by the institution.

Once an institution decides which goals should be included in its plan, it must establish levels for each of these goals. The balance is a delicate one: the goals must be realistic and achievable, yet sufficiently high to warrant the proposed Satisfactory or Outstanding ratings. In determining whether the goals are consistent with the ratings, the institution should take into account the factors typically considered during a CRA examination.

Performance Context

Essentially, this section of the plan should include any information developed in the institutions normal business planning that it would like the FDIC to consider regarding lending, investment and service opportunities for each assessment area covered by the plan. This information should include a description of any legal constraints or limitations that affect the type of loans, investments or services that the institution offers. Information submitted by the institution will be considered along with data that the FDIC has obtained from community, government, civic and other sources

Term

The institution must set a term, not to exceed five years, during which the plan will be in effect. If the term is longer than one year, interim goals must be established for each year of the plan. These interim goals should reflect yearly adjustments based on information furnished in the performance context of the plan, which describes both the financial institutions capacity and local economic and demographic conditions. There should also be a reasonable relationship between past performance by the institution in the categories of lending, investments and services, and the proposed goals.

Other Considerations

Effective Date

The plan should include a proposed effective date, which should be at least 90 days after the plan is submitted to the FDIC. The institution will not be evaluated under the strategic plan option until it has been operating under an approved plan that has been in effect for at least one year.

Confidentiality

Under the provisions of the Freedom of Information Act (FOIA), a strategic plan submitted to the FDIC is a public document that is available to the public upon request. This may include any written correspondence between the institution and the FDIC during the process of reviewing a proposed strategic plan.

An institution may request confidential treatment of information that would be exempt from public disclosure under FOIA. The request must be submitted in writing concurrently with the filing of the strategic plan and must discuss in detail the justification for confidentiality. The institution should explain the harm that would result from public release of the information. Examples of the types of information that the institution may deem confidential include potential product offerings, marketing strategies and merger, acquisition or expansion plans. The FDIC will advise an institution of a decision to make information labeled Confidential available to the public.

Alternative Evaluation

The institution may elect in its plan to be evaluated under an alternative assessment method (e.g., the lending, investment and service tests for large institutions, the small institution performance standards or the community development test, as appropriate) if it fails to substantially meet the strategic plan goals for a Satisfactory rating.

Amendments

During the term of the plan, mergers, acquisitions, branch expansions and closings or other events may occur that significantly change the context in which the institution operates. Moreover, there may be adverse impacts on the economic or market climate of the assessment area that hamper the institutions ability to meet the projected goals and activities in the plan. Consequently, an institution may request an amendment if material changes develop that were not anticipated in the initial performance context. Depending on the magnitude of these proposed changes, the amended plan may be required to undergo the public comment process.

Timing

The FDIC will act upon a plan within 60 calendar days after the FDIC receives the complete plan and other material required under the regulation. If the FDIC fails to act within this

time period, the plan shall be deemed approved unless the FDIC extends the review period for good cause.

The 60-day processing period will be suspended on the date that the FDIC requests that additional information be provided. If the institution cannot satisfactorily respond to the FDIC's questions or cannot otherwise supply sufficient information to form a recommendation, the strategic plan submission may be returned to the institution as incomplete. Returning the strategic plan does not preclude a financial institution from submitting another request at a later date; however, this will start a new 60-day processing period. The FDIC will determine on a case-by-case basis whether additional public comment is needed. Generally, the submission of another plan would necessitate another public comment period.

If the plan is denied, the institution may request that the FDIC reconsider its decision within 30 days of its receipt of the notice of denial. The FDIC will determine whether the request for reconsideration sets forth substantive information that was not submitted for good cause in the original submission and whether there is justification to reverse the denial.

Evaluation

This approach to addressing an institution's CRA responsibilities presents an opportunity for a very straightforward examination. The first question an examiner should investigate is whether the goals were met. If they were, the appropriate rating should be assigned. The appropriateness of the goals will have already been determined in the process of public comment and agency review and approval.

The examination procedures permit an institution to receive a Satisfactory rating even if it has not fully met each of the goals in the plan. The examiners will consider whether the goals have been substantially met when assigning a rating. In determining whether an institution has substantially met its plan goals, the FDIC will consider circumstances beyond the control of the institution, such as economic conditions or other significant market factors or events that have adversely affected the institutions ability to perform. Examiners will review updated performance context and assessment area information to ascertain whether the institution's performance is commensurate with either a Satisfactory or Outstanding rating.

However, the examiner should approach an examination of an institution operating under a plan understanding that part of the purpose for these regulatory provisions was to give the institution significant latitude in designing a program that is appropriate to its own capabilities, business strategies and organizational framework, as well as to the communities that it serves. Consequently, the institution may develop plans for a single assessment area that it serves, for some, but not all, of the assessment areas that it serves, or for all of them. It may develop a plan that incorporates and coordinates the activities of various affiliates. It will be the examiner's challenge to evaluate institutions operating under one plan or a number of plans in a way that accurately reflects the results achieved and that sensibly wraps that evaluation into the overall assessment of the institution.

As with other aspects of the CRA examination, the examiner should first make the greatest use possible of information available from the agencies to evaluate performance under the plan. However, it is likely that some elements of a plan under review will not be reflected in public or other agency data. Consequently, the examiner may, of necessity, have to ask the institution for the data necessary to determine whether it has met its goals. The examiner should do so, to the greatest extent possible, by asking the institution to provide data for review prior to going on-site for the examination. The examiner should also seek to mitigate burden by, wherever possible, using data in the form maintained by the institution.

Examination Procedures for Institutions with Strategic Plans[1]

Examination Scope

1. For institutions with more than one assessment area, identify assessment areas for full scope review. To select one or more assessment areas for full scope review, analyze prior performance evaluations, available community contact materials, reported lending data and demographic data on each assessment area and consider factors such as:
   a. The level of the institution's lending, investment and service activity in the different assessment areas, including low- and moderate-income areas, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies designated by the Agencies[2] based on (a) rates of poverty, unemployment, and population loss or (b) population size, density, and dispersion[3];
   b. The number of other institutions in the different assessment areas and the importance of the institution under examination in meeting credit needs in the different assessment areas, particularly in areas with a limited number of financial service providers;
   c. The existence of apparent anomalies in the reported lending data for any particular assessment area(s);
   d. The time since the assessment area(s) most recently received a full scope examination;
   e. Performance that falls short of plan goals based on a review of available data;
   f. The institution's prior CRA performance in the different assessment areas; and
   g. Comments from the public regarding the institution's CRA performance.

[1] These reflect the interagency examination procedures in their entirety.

2 The Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, and The Office of the Comptroller of the Currency.

3 A list of distressed or underserved nonmetropolitan middle-income geographies is available on the FFIEC web site at www.ffiec.gov.

2. For interstate institutions, a rating must be assigned for each state where the institution has a branch and in every multistate MSA where the institution has branches in two or more of the states that comprise that multistate MSA. Select one or more assessment areas in each state for examination using these procedures.

Performance Context

1. Review the institution's public file for any comments received by the institution or the agency since the last CRA performance evaluation that assists in evaluating the institution's record of meeting plan goals.
2. Consider any information that the institution provides on its record of meeting plan goals.
3. Contact local community, governmental or economic development representatives to update or supplement information about the institution's record of meeting plan goals.
4. As necessary, consider any information the institution or others may provide on local community and economic conditions that may affect the institution's ability to meet plan goals or otherwise assist in the evaluation of the institution.

Performance Criteria

1. Review the following:
   a. The approved plan and approved amendments;
   b. The agency's approval process files; and
   c. Written comments from the public that the institution or the agency received since the plan became effective.
2. Determine whether the institution achieved its performance goals for each assessment area examined.
   a. Review the plan's measurable annual goals for each performance category and assessment area(s) to be reviewed.
   b. Obtain information and data about the institution's actual performance for the period that has elapsed since the previous examination.
   c. Compare the plan goals for each assessment area reviewed to the institution's actual performance since its last examination in each assessment area reviewed to determine if all of the plan's goals have been met.
3. If any goals were not met, form a conclusion as to whether the plan goals were "substantially met." In doing so, consider the number of unmet goals, the degree to which the goals were not met, the importance of those goals to the plan as a whole, and the reasons why the goals were not met (e.g., economic factors beyond the institution's control).
4. Discuss preliminary findings with management.
5. Summarize conclusions about the institution's performance.

Ratings

These instructions assume that the strategic plan covers all of the institution's assessment areas. If not, the analysis of performance for the assessment area(s) covered by the strategic plan must be combined with the analyses for assessment areas that were subject to other assessment method(s) in order to assign a rating.

1. Group the analyses of the assessment areas examined by MSA[4] and nonmetropolitan areas within each state where the institution has branches. If an institution has branches in two or more states of a multi-state MSA, group the assessment areas that are in that MSA.
2. If the institution has substantially met its plan goals for a satisfactory rating or, if applicable, an outstanding rating, in all assessment areas reviewed, summarize conclusions about the institution's performance in each MSA and the nonmetropolitan area of each state in which an assessment area was examined using these procedures. Assign the appropriate preliminary rating for the institution and, as applicable, each state or multistate MSA and proceed to Step 6, below.
3. If the institution did not substantially meet its plan goals in each assessment area, check to determine if the institution elected in its plan to be evaluated under an alternate assessment method.
   a. If the institution did not elect in the plan to be evaluated under an alternate assessment method, assign a "Needs to Improve" or "Substantial Noncompliance" rating to those assessment areas in which plan goals were not substantially met, depending on the number of goals missed, the extent to which they were missed, and their importance to the plan overall.
   b. If the institution elected in its plan to be evaluated under an alternate assessment method, perform the appropriate procedures to evaluate and rate the institution's performance in those assessment areas in which the institution did not meet plan goals.
4. For institutions operating in multiple assessment areas, determine the relative importance of the assessment areas reviewed in forming conclusions for each MSA and the nonmetropolitan area within each state and for any multistate MSA where the institution has branches in two or more states. In making that determination, consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The lending, service, and investment opportunities in each;
   c. The significance of the institution's loans, qualified investments, and lending-related services, as applicable, for each, particularly in light of the number of other institutions and the extent of their activities in each; and

4 The reference to MSA may also reference metropolitan division (MD).

   d. Demographic and economic conditions in each.
5. For an institution operating in multiple MSAs or nonmetropolitan areas in one or more states or multi-state MSAs, assign a preliminary rating for each state and multi-state MSA. To determine the relative significance of each MSA and nonmetropolitan area to the rating in a state, consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The lending, service, and investment opportunities in each;
   c. The significance of the institution's loans, qualified investments, and lending-related services, as applicable, for each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
6. For institutions with operations in more than one state, assign a preliminary overall rating. In determining the relative significance of the institution's performance in each state or multistate MSA to its overall rating consider:
   a. The significance of the institution's activities in each compared to the institution's overall activities;
   b. The lending, service, and investment opportunities in each;
   c. The significance of the institution's loans, qualified investments, and lending-related services, as applicable, for each, particularly in light of the number of other institutions and the extent of their activities in each; and
   d. Demographic and economic conditions in each.
7. Review the results of the most recent compliance examination and determine whether evidence of discriminatory or other illegal credit practices that violate an applicable law, rule, or regulation should lower the institution's overall CRA rating or, if applicable, its CRA rating in any state or multi-state MSA.[5] If evidence of discrimination or other illegal credit practices in any geography by the institution, or in any assessment area by any affiliate whose loans were considered as part of the institution's lending performance, was found, consider:
   a. The nature, extent, and strength of the evidence of the practices;
   b. The policies and procedures that the institution (or affiliate, as applicable) has in place to prevent the practices;
   c. Any corrective action the institution (or affiliate, as applicable) has taken, or has committed to take, including voluntary corrective action resulting from self-assessment; and
   d. Any other relevant information.
8. Discuss conclusions with management and assign a final rating to the institution and state or multi-state MSA ratings, as applicable, considering the preliminary rating and any evidence of discrimination and other illegal credit practices.
9. Write comments for the public evaluation and the examination report.

Public File Checklist

1. There is no need to review each branch or each complete public file during every examination. In determining the extent to which the institution's public files should be reviewed, consider the institution's record of compliance with the public file requirements in previous examinations, its branching structure and changes to it since its last examination, complaints about the institution's compliance with the public file requirements, and any other relevant information.
2. In any review of the public file undertaken, determine whether branches display an accurate public notice in their lobbies, a complete public file is available in the institution's main office and at least one branch in each state, and the public file available in the main office and in each state contains:
   a. A copy of the approved strategic plan;
   b. All written comments from the public relating to the institution's CRA performance and any responses to them for the current and preceding two calendar years (except those that reflect adversely on the good name or reputation of any persons other than the institution);
   c. The institution's most recent CRA Performance Evaluation;
   d. A map of each assessment area showing its boundaries and, on the map or in a separate list, the geographies contained within the assessment area;
   e. A list of the institution's branches, branches opened and closed during the current and each of the prior two calendar years, their street addresses and geographies;
   f. A list of services (loan and deposit products and transaction fees generally offered, and hours of operation at the institution's branches), including a description of any material differences in the availability or cost of services between those locations;
   g. The institution's CRA Disclosure Statement(s) for the prior two calendar years;
   h. A quarterly report of the institution's efforts to improve its record if it received a less than satisfactory rating during its most recent CRA examination;

5 "Evidence of discriminatory or other illegal credit practices" includes, but is not limited to: (a) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act; (b) Violations of the Home Ownership and Equity Protection Act; (c) Violations of section 5 of the Federal Trade Commission Act; (d) Violations of section 8 of the Real Estate Settlement Procedures Act; and (e) Violations of the Truth in Lending Act regarding a consumer's right of rescission.

i. HMDA Disclosure Statements for the prior two calendar years for the institution and for each non-depository affiliate the institution has elected to include in assessment of its CRA record, if applicable;

j. The number and dollar amount of consumer loans, for large banks, if applicable; and

k. The loan-to-deposit ratio, for small institutions.

3. In any branch review undertaken, determine whether the branch provides the most recent public evaluation and a list of services generally available at its branches and a description of any material differences in the availability or cost of services at the branch (or a list of services available at the branch).

Public Notice

Determine that the appropriate CRA public notice is displayed as required by § 345.44 and Appendix B.