American Bankers Association Comment Letter Writing Guide: CRA Modernization

The OCC and FDIC have proposed major revisions to the regulations implementing the Community Reinvestment Act (CRA). The outline below serves as a guide to help banks draft comment letters in response to the agencies' proposal.

While the Federal Reserve did not sign on to the proposal, Federal Reserve governors have acknowledged that the CRA regulatory framework is out of date and needs to be modernized. As a result, all agencies will be reading comment letters on the proposed rule, which means that it is important that **all banks**—regardless of regulator—participate in the comment process.

Keep in mind the following as you draft your letter:

- **Pick and choose from the themes below; it is not necessary to comment on each issue. In fact, choosing just one item to comment on is perfectly acceptable.**
- Provide specific examples of how the proposal will impact your bank. This will make for a more effective and impactful letter.
- Consider including your own recommendations for improving the CRA regulatory and supervisory framework.
- Comments due: ***Monday, March 9th***
- To submit comments: Go to www.regulations.gov. Enter "Docket ID OCC–2018–0008" in the Search box and click "Search." Click on "Comment Now" to submit public comments. Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

[Insert Date]

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments, RIN 3064–AF22

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219
Docket ID OCC–2018–0008

Re: Community Reinvestment Act Regulations

Dear Madam or Sir:

I. Introduction

A. Introduce Your Bank. ***[Asset size, footprint, primary federal regulator, business model, etc.]***

B. Thank the OCC and the FDIC. Thank you for your leadership and hard work to draft a proposal on which stakeholders can provide feedback.

C. Commitment to Community. We are committed to the goals of CRA and to meeting the credit and financial services needs of our customers and communities. ***[Insert bank-specific examples here. Explain how your bank has coordinated with community groups to identify community needs.]***

D. Need to Modernize. We take pride in being engines of economic growth. But, CRA regulation and supervision have become overly complex, unpredictable, and they have not kept up with the way the consumers expect to use technology to access financial products and services. The need to update CRA has existed for years and will grow more pressing as technology and the financial services industry continue to evolve.

E. Interagency Coordination. We urge all three banking agencies—the OCC, FDIC, and Federal Reserve—to develop a final CRA rule that is issued on an interagency basis.

II. Qualifying Activities

A. Expanded Criteria for Qualifying Activities. The proposed qualifying activities criteria generally would include activities that qualify for CRA credit today as well as other activities that are consistent with the purpose of CRA, but may not qualify under the current regulatory framework. Examples of qualifying activities would include: activities supporting community support services (such as child care, education, and health services), essential community facilities, essential infrastructure that serves LMI individuals, naturally occurring affordable housing, rental housing for LMI individuals residing in high-cost areas, and activities in Indian country.

   Banks could receive pro rata credit for activities that partially, but not exclusively, benefit LMI individuals, such as financing mass transit that serves LMI neighborhoods and other geographies. Additionally, to incentivize banks to engage in certain activities, the proposal would double the value of certain activities, including activities involving community development financial institutions (CDFIs), community development investments (not including mortgage-backed securities or municipal bonds), and other affordable housing-related community development loans.

   [Select one, or a few, items from this list and discuss how they would help you to meet the needs of your community more effectively. Be sure to include relevant background regarding the demographics of your community, local economic conditions, and availability of CRA opportunities. For instance, is there a lack of investment opportunities in your area? Is affordable housing less of a need than job creation and infrastructure improvements? Would your expertise be better suited to making small business loans instead of investments?]

B. Some Activities No Longer Qualify or Would Receive Only Partial Credit. Mortgage loans to high-income individuals living in low-income census tracts would no longer qualify for CRA credit. In addition, CRA qualifying loans and community development investments would be valued based on their average month-end on-balance sheet dollar value; qualifying retail loans originated and sold within 90 days of their origination date would be valued at 25% of their origination value. This means that loans sold to the GSEs or to a correspondent would only be valued at 25%. ***[How would these changes impact your bank? Are they good public policy? Why or why not?]***

C. Confirmation Process. The proposal would establish a process under which a bank could ask its regulator to confirm that an activity qualifies for CRA credit. Within 6 months, the agency will notify the requestor whether the activity qualifies (incorporating any conditions, if applicable). If the agency does not object within this timeframe, the activity would be confirmed as a qualifying activity. ***[Describe how a preapproval process might***

incentivize your bank to engage in new and innovative CRA activities. What is your opinion on the 6-month review period? Is it timely?]

D. Illustrative List of Qualifying Activities. The agencies would maintain on their website a non-exhaustive list of examples of qualifying activities and non-qualifying activities. In addition to updating the list in response to requests submitted pursuant to the confirmation process described above, the agencies will publish the qualifying activities list at least every three years for public notice and comment. ***[Would the illustrative list be of value for your institution? Why or why not? What are your views on publishing the list every three years for public notice and comment? What are the pros and cons of that approach?]***

III. Assessment Areas

A. Generally. To address concerns that the existing CRA regulations place too much emphasis on physical bank locations, the proposal would establish two types of assessment areas: facility-based assessment areas and deposit-based assessment areas.

B. Facility-Based Assessment Area. A bank would be required to delineate a facility-based assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans.

C. Deposit-Based Assessment Area. In addition, a bank that sources 50 percent or more of its retail domestic deposits from outside its facility-based assessment area(s) would be required to designate deposit-based assessment areas that include the non-overlapping geographies in which the bank sources 5 percent or more of its retail domestic deposits. Retail domestic deposits would include deposits provided by an individual, partnership, or corporations; they would not include deposits obtained via deposit brokers. ***[Do you agree with tying assessment areas to deposits? Why or why not? Are the 50% and 5% thresholds appropriate? Would your bank be required to add additional assessment areas? If so, how many? What would this mean for your CRA program? Where would these additional assessment areas be—in a geography well served by financial institutions, or a CRA "desert?"]***

IV. CRA Performance Measurement

A. Generally. In lieu of the current CRA regulation's lending, investment, service, and community development tests, the proposal's new framework would evaluate a bank's CRA performance within each assessment area and at the bank level using three measures. Together, these three measures would generate a presumptive rating, which the agencies could adjust based on performance context factors or evidence of discriminatory or other illegal credit practices. ***[Do you support the concept of developing more objective CRA performance measures? Why or why not? Do you believe the proposed approach is grounded in thorough data and analysis? Why or why not? If known, how would the proposed framework impact your bank? Alternatively, explain why you lack information and data to evaluate the proposal's impact on your bank and the community you serve. Do you support moving forward with the metrics described below? Why or why not? Should the agencies move forward by adjusting and finalizing the proposed performance measures? Or, should they pause and regroup (with all three agencies) and re-propose a new metric framework? If so, what should that new framework include? Would the proposed methodology for quantifying community service hours and the weighting given to those activities impact your bank's volunteer service outreach going forward? If so, explain.]***

B. CRA Evaluation Measure. The CRA evaluation measure is the sum of (1) a bank's qualifying activities divided by the value of the bank's retail domestic deposits and (2) the number of the bank's branches located in LMI census tracts, distressed areas, underserved areas, and Indian country divided by its total number of branches, multiplied by 0.01. The average of a bank's bank-level CRA evaluation measures will correspond to the following CRA ratings:

- ➢ Outstanding. 11 percent or higher
- ➢ Satisfactory. 6 percent or higher
- ➢ Needs to Improve. 3 percent or higher
- ➢ Substantial Noncompliance. Less than 3 percent

C. Retail Lending Distribution Test. This test evaluates the distribution of the number of a bank's loans in a major retail lending product line (i.e., a retail lending product line that comprises at least 15 percent of the bank's retail originations by volume) in an assessment area using (1) a geographic distribution test for small loans to businesses and farms and (2) a borrower distribution test for home mortgages, consumer loans, and small loans to businesses and farms.

- ➢ Geographic Distribution Test. To pass the geographic distribution test for small loans to businesses/farms, a bank's percentage of such loans in LMI census tracts must meet or exceed the associated geographic demographic comparator or peer comparator.
- ➢ Borrower Distribution Test. To pass the borrower distribution test for mortgages to LMI, consumer loans to LMI, and small loans to small businesses and small farms, a bank must meet or exceed the associated borrower demographic comparator or the borrower peer comparator.

D. 2% Community Development Minimum. A bank's community development loans and investments must meet or exceed 2% of the average quarterly value of the bank's retail domestic deposits.

E. Small Bank Opt In. The proposal would eliminate the existing Intermediate Small Bank category and would permit banks with $500 million or less in assets the option to opt-in to the new performance evaluation standards or choose to be evaluated under the existing regulatory framework for small banks. ***[Is the opt in an attractive alternative? Is the $500 million threshold appropriate? If not, why? What would be a more appropriate cutoff? How would the $500 million threshold impact you if you are an Intermediate Small Bank under the CRA rules that exist today? What would you have to change in terms of your new recordkeeping and reporting obligations? What would this cost? Be specific and detailed in your descriptions.]***

V. Data Collection, Recordkeeping & Reporting

A. Generally. The proposal would focus on a bank's balance sheet in lieu of the CRA data reporting that exists today. It impose significant recordkeeping requirements regarding the collection and maintenance of new data supporting the bank's performance. Each year, a bank would need to report the following information for all qualifying retail loans (including consumer loans), including:

- A unique number or alpha-numeric symbol to identify the relevant loan file;
- Loan type;
- Date of (as applicable) origination, purchase, or sale if the loan is a retail loan and sold by the bank within 90 days of origination;
- An indicator of whether the loan was originated or purchased;
- Loan amount at origination or purchase;
- Outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on balance sheet;
- Loan location and associated FIPS code for the MSA, state, county or county equivalent, and census tract;
- Income or revenue of the borrower; and
- The qualifying activities criteria in the regulation that the loan satisfies or that it is on the illustrative list and whether it serves a particular assessment area, if applicable.

In addition, banks would be required to collect and maintain the following information on non-qualifying mortgage and consumer loan originations: a unique identification number or symbol, the loan type, the origination date, the loan amount at origination, the loan location and the income of the borrower.

For each community development investment, a bank would be required to collect and maintain:

- A unique identification number or similar mechanism;
- Investment type;
- Date of investment;
- Outstanding dollar value of the investment as of the close of business on the last day of each month that the investment is on-balance sheet;
- The value of the monetary or in-kind donation;
- The investment location, and
- The qualifying criteria that the investment satisfies or that it is on the illustrative list and whether it serves a particular assessment area, if applicable.

For each qualifying CD service, a bank would be required to collect and maintain descriptions of each qualifying CD service and the date each CD service was performed.

Additionally, banks would be required to collect and maintain results of the borrower distribution and geographic distribution tests for major retail lending product lines and would be required to collect the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter. ***[Describe your bank's data integrity and substantiation processes and the time that they take to complete. What types of new information would your bank be required to collect and report? Describe (and if possible, estimate) the steps that would be involved in transitioning to a balance sheet approach.]***