American Bankers Association
Comment Letter Writing Guide: CRA Modernization

The OCC has issued an Advance Notice of Proposed Rulemaking (ANPR) seeking input on the best ways to modernize the regulatory framework implementing the Community Reinvestment Act (CRA). This outline helps banks draft comment letters responding to the OCC's request.

It is important that ***all banks***—regardless of regulator—participate in the ANPR process. Even though the FDIC and the Federal Reserve did not join the OCC's request for comment, those agencies will be reading the comment letters in anticipation of working together to draft a joint proposed rule. It is critical for the agencies to hear from as many banks as possible regarding the need for CRA modernization.

Below are a few items to keep in mind 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 the CRA challenges that your bank has encountered. This will make for a more effective and impactful letter.
- Consider including your own recommendations for improving the CRA regulatory and supervisory framework. All ideas – large and small – should be on the table.
- Comments due: ***Monday, November 19th***
- 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.
- Send ABA a copy of your letter; send the letter to modernizingcra@aba.com.

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[Insert Date]

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

Re: Reforming the Community Reinvestment Act Regulatory Framework
Docket ID OCC–2018–0008

Dear Madam or Sir:

I. Introduction

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

B. <u>Thank the OCC</u>. Thank you for your leadership in soliciting input on ways to update the CRA regulatory and supervisory framework.

C. <u>Commitment to Community</u>. 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.]***

D. <u>Need to Modernize</u>. 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.

D. <u>Need for Coordination</u>. We urge the OCC to work with the FDIC and the Federal Reserve to develop a proposed rule based on comments received in response to the CRA ANPR.

II. Today's CRA Challenges

A. ***Below is a high-level list of CRA problems that ABA members have identified. Select one, or a few, items from this list and use specific examples from your bank's experience to describe how these problems occur in practice. Specific illustrations make comment letters effective.***

B. <u>Examples of CRA Problems</u>

1. <u>The Existing CRA Tests</u>. Banks must meet each of the CRA tests. This artificially dictates how banks invest in their communities. ***[Include an example].***
2. <u>Unspecified Expectations</u>. Regulators have adopted unofficial CRA goals (e.g., CRA activities should total a certain percentage of assets or Tier 1 capital). ***[Do your examiners seem to have CRA goals that are not shared with the institutions they supervise? Describe.]***
3. <u>Strategic Plans</u>. In some cases, regulators have discouraged community banks from submitting strategic plans by saying that the option was intended for larger or non-traditional institutions. All banks could benefit from the certainty that strategic plans provide.
4. <u>What Counts</u>. There is a lack of predictability regarding activities that count for CRA credit. ***[Include examples your bank has encountered.]***

4. <u>Assessment Areas</u>. Tying Assessment Areas to branches is outdated. Branches are *one* means by which banks generate deposits, but they are no longer the *only* means. ***[Describe.]***

5. <u>Peer Comparison</u>. Banks are being compared to institutions that are not true peers. There needs to be consistency in asset size, business models, and products offered to provide an accurate and meaningful peer comparison. ***[Provide an example of situations where your bank was not compared to true peers.]***
6. <u>CRA Ratings</u>. There is a lack of transparency and consistency regarding the assignment of CRA ratings. What is considered Excellent, Good, Adequate, or Poor performance is too subjective and often depends on which examiner conducts the exam.

7. Other. ***[What other CRA issues has your bank identified? What other opportunities exist to update CRA?]***

III. CRA Performance Standards

A. Performance Criteria. Requiring banks to meet the lending, service, and investment tests artificially drives funds to certain activities. The CRA regulations should be revised to allow banks to serve their communities more effectively. ***[Provide examples. 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. Creation of a CRA Metric. ***The OCC has floated the concept of establishing a metric by which regulators would measure a bank's CRA performance. Under this approach, a metric-based performance measurement system would contain thresholds or ranges (benchmarks) that correspond to the four statutory CRA rating categories. Below are some of the pros, cons, and questions that ABA members have identified regarding the metric. Select items from this list to discuss in your letter. Elaborate on additional considerations your bank has identified. At this stage, ABA plans to offer general support for the metric concept, but will point out pros and cons associated with the idea. ABA's approach should in no way influence an individual bank's comment letter.***

1. Generally. A CRA metric has the potential to provide needed predictability and transparency to CRA regulation and supervision. However, it would not be appropriate to establish a universal CRA metric applicable to all banks due to significant variations in bank business models.

2. Pros

   a. Certainty. Unofficial CRA targets exist today. Performance Evaluations reference a variety of metrics (e.g., percentage of net assets, average assets, Tier 1 capital). A metric-based approach would make regulatory expectations known and reduce subjectivity.

   b. Flexibility. The current approach artificially forces banks to engage in certain activities. A metric could provide strategic flexibility that allows a bank to choose the products and activities on which it focuses, so long as the institution meets the prescribed ratio for overall CRA activity. A metric-based approach should allow a bank to fill its "CRA bucket" based on the institution's expertise, business model, community needs assessment, and the extent of opportunities in its Assessment Area.

   c. Enhanced Planning. A metric would enable the executive team to establish CRA goals, obtain Board signoff, and have confidence that the bank will receive a particular CRA rating if it achieves those goals.

   d. Tracking. A metric-based approach would enable banks to chart their CRA performance throughout the exam cycle.

   e. Out of Assessment Area Activity. A metric might provide the certainty needed for banks to engage in CRA activities outside of their Assessment Area (e.g., meeting needs in CRA deserts, rural areas, areas with economic needs).

f. Growing Banks. In order for a bank to achieve its CRA ratio, the activities going into the numerator would need to increase as the bank grows (if a denominator is based on deposits or assets). This would provide needed predictability for growing banks.

3. Cons and Potential Unintended Consequences

   a. Business Models. A universal ratio would not take into account different business models (e.g., community banks, CDFIs, wholesale banks, limited purpose banks, large retail banks).

   b. Performance Context. A universal ratio would not reflect differences in community demographics or local economies. How would performance context be factored into a metric-based approach?

   c. Role of Government. A metric could be viewed as government allocation of credit and investments.

   d. Economic Downturns. The metric would remain in place during economic downturns, despite decreased lending and investment opportunities. If the metric were to adjust for economic cycles, banks would lose predictability.

   e. Administration Changes. The metric could be subject to political volatility and could be adjusted up or down as administrations come and go.

   f. Large-Dollar Loans and Investments. A metric could incentivize banks to fill up their "CRA bucket" with large dollar loans and investments at the expense of smaller, impactful transactions. (This could potentially be addressed by applying a multiplier).

   g. High-Cost vs. Low-Cost Areas. The metric concept may disadvantage small and rural markets where loan sizes are smaller. (This could potentially be addressed by assigning a multiplier to low-cost areas).

   h. Effort. A metric system should not discourage banks from providing loans and investments that take more time and effort (e.g., affordable single-family housing, small business loans, etc.). (A multiplier could be used to incentivize banks to engage in these types of transactions).

   i. Community Impact. How would a metrics-based approach take community impact into account? Low-dollar/high-value activities can have a significant impact on a bank's community, but they wouldn't move the needle on a metric.

   j. Innovative and Complex Investments. How would a metric reward innovative and complex investments?

4. Other Observations

   a. Community Banks. Some community banks are satisfied with the current CRA framework and are wary of a metric-based approach. Regulators should consider:

      i. Retaining the existing Small Bank test, but increasing the Small Bank threshold.

      ii. Adopting a streamlined metric for community banks based on the in/out ratio.

b. Menu Approach. A one-size-fits all CRA metric has the potential to create winners and losers due to the wide array of bank business strategies and operating models. To avoid this, regulators could allow banks to select from a menu of CRA metrics.

c. Numerator. A CRA metric must be well-defined, transparent, and objective. Regulators must clearly describe the activities a bank could incorporate into the numerator of the metric. Otherwise, a metric-based approach will not address the uncertainty that exists in CRA today.

   i. Weighting. If regulators weight certain activities, it is imperative that there be transparency regarding what the weights are and the specific activities to which they apply.

d. Denominator. There are multiple options on which a denominator could be based.

   i. Option: Deposits

      - Pros. Would align with legislative history and the spirit of CRA; could align with a revised approach to Assessment Areas that would be based on geographies where a bank has a concentration of its deposits.

      - Cons. Would need to determine how to treat brokered deposits.

   ii. Option: Average Assets

      - Pros. Data regarding a bank's average assets is readily available. This approach does not require additional calculations or reporting. In addition, average assets is a common benchmark on which banks base their CRA planning and goal setting today. This approach would avoid the brokered deposit question.

      - Cons. Would not align as closely with the history of CRA.

   iii. Capital. Capital will vary by bank, business model. Also, every bank has a different capital structure. It is bad policy to increase regulatory compliance burden on highly capitalized banks.

e. Strategic Plans. Banks that have already negotiated strategic plans should not be disadvantaged by a metrics-based approach. The strategic plan option should remain in place.

5. Metric Testing. The agencies should conduct extensive testing of any proposed metric and make the testing methodology and results public. The sample size should represent banks of all asset sizes, business models, and geographies. In addition, it is critical that regulators provide transparency into any proposed formula, thereby allowing banks to test their CRA performance against a potential CRA metric.

6. Reporting. Any metric-based framework should rely on board reporting and CRA processes that exist today. A metric-based approach should not trigger a new public reporting regime. ***[Describe your bank's data integrity and substantiation processes and the time that they take to complete. Also describe the sporadic nature and timing considerations associated with community development loans and investments. Explain how these factors would complicate any new CRA reporting requirement].***

II. Assessment Areas

A. Generally. The Assessment Area concept is too rigid and outdated. In addition, as the CRA modernization process moves forward, it is critical that regulators contemplate how any revisions to the Assessment Area framework will impact the potential creation of a CRA ratio.

B. The Changing Role of Branches

1. Previously, branches were the predominant delivery channel through which banks provided products and services. While branches will continue to play a role, they are and will be *a* channel, not *the* channel through which customers conduct banking business. ***[Provide examples of how banking relationships are no longer a function of geographic location. Describe changes in consumer behavior and expectations.]***

C. Potential Options/Approaches. ***Below are banker suggestions for updating Assessment Areas. Discuss one or more of these options. Or, make your own recommendation for revising how Assessment Areas are defined. In a Notice of Proposed Rulemaking, the agencies could propose a number of options.***

1. Option: Weight Assessment Area Activities. Use the existing Assessment Area construct and give banks credit for all CRA loans and investments nationwide, but provide a CRA multiplier to activities in the bank's Assessment Area. Banks would not be required to hit a threshold in each of their Assessment Areas before they are able to obtain CRA credit for activities outside of their Assessment Areas. Out of Assessment Area activities should be considered additive to a bank's the overall CRA rating, not create additional obligations.

   a. Pros.

      i. Focus on Community. The focus would remain on a bank's community, but a bank would not need to hit a particular threshold in the Assessment Area prior to obtaining credit in other geographies.

      ii. Uncertainty. This would address uncertainty associated with whether a bank knows that it has met its community's needs and can begin counting regional activities.

      iii. Areas in Need. It is a possible solution to CRA deserts and other areas in need of an economic boost.

   b. Cons.

      i. The Internet. This approach alone will not update the Assessment Area concept to address internet banks and traditional banks that are moving toward a fintech-like model.

      ii. Hot Spots. This approach may need to be combined with other revisions to address CRA hot spots.

2. Option: Depositor Location. Base Assessment Areas on where depositors are located. Look at deposit units, not dollar amounts. A CRA obligation would be triggered if a specified percentage of a bank's depositors are located in a particular area.

   a. Pros.

      i. Spirit of CRA. Would be consistent with the spirit of CRA.

ii. Transparency. Would provide transparency regarding where deposits are located and where banks are lending.

iii. Balances Branches and Online Activity. Could provide a dynamic and long-lasting approach as banking migrates from brick and mortar to digital.

iv. Certainty. Establishing a deposit concentration threshold would provide needed certainty regarding the establishment of Assessment Areas and would avoid situations where examiners attempt to re-define Assessment Areas that a bank has delineated.

b. Cons. This approach could trigger additional reporting and/or data analysis that some banks haven't done in the past.

c. Comments and Observations

i. Concentration of Deposits. The concentration threshold should be a function of a bank's overall deposits or assets, not market share. Banks should not have a CRA obligation everywhere they have a deposit customer. Otherwise, CRA activities will be diluted and not impactful.

ii. Bias Toward Branches. To date, regulators have had a strong preference toward branches. This thinking is outdated. Basing CRA responsiveness on the presence of physical branches penalizes banks that generate deposits online.

2. Option: Hybrid Approach -- Branch Location and Depositor Location. Combine branch-based Assessment Areas (using the existing Assessment Area methodology) and internet-based Assessment Areas (based on the deposit concentration methodology described above).

a. Pros. Retains an element of geography. Acknowledges changes in consumer behavior and the prevalence of online and mobile banking. Recognizes that consumers shop nationally for long-term deposit rates. See additional pros in #1, above.

b. Cons. See cons in #1, above.

3. Option: Combine Assessment Areas. Banks should have the ***option*** to combine counties within a state. Separate counties should not have to be standalone Assessment Areas. A variation of this approach could create statewide or regional Assessment Areas and pair them with a metric in lieu of the current PE system. Achieving the metric would demonstrate that a bank is adequately serving LMI communities on a broad basis.

a. Pros. Consolidating Assessment Areas could improve exam efficiency and would be less complex and more efficient for banks to manage.

III. What Counts?

A. Overview. Regulators should provide clarity regarding activities that receive positive CRA consideration. Challenges arise when: an activity qualifies for CRA credit during one exam, but not the next; a bank believes that an activity will receive CRA credit, but does not; and a bank is unable to obtain confirmation in advance that an activity will receive credit. ***[Provide examples of inconsistent treatment regarding what counts or where documentation requirements were unnecessarily complex].***

C. List of Qualifying Activities. Regulators should provide an illustrative list of approved CRA activities. This list should not be exclusive, and activities on the list should not be viewed as an expectation. Examples include: loan modifications, assets held in portfolio (not just what was originated during the exam cycle), community development renewals and refinancings, Opportunity Funds, loans and investments in Opportunity Zones, small-dollar loans, etc.

D. Advance Confirmation. To encourage community development activities and support bank engagement in innovative projects, regulators should establish a process whereby banks may request confirmation of community development eligibility in advance. The timeliness of the regulatory response will be critical to the success of this process.

E. Examples of Pain Points. ***[Below are examples of items that need to be revised or clarified. Select one or two and describe how these issues have arisen at your bank. Describe additional challenges you have encountered obtaining CRA credit.]***

1. Community Benefit. Many opportunities to participate in community development initiatives that would benefit a bank's *entire* community do not receive community development credit. That is because current regulatory practices only recognize such initiatives if they are "targeted to" LMI individuals or have benefits of revitalizing or stabilizing disaster areas or underserved or distressed middle-income areas. Policymakers should revisit the definitions of community and economic development to recognize bank efforts to fund projects that benefit the entire community, including LMI individuals and neighborhoods. Examples: workforce development; financing the construction of infrastructure and community service establishments, such as hospitals; financial literacy.
2. Small Business Lending. The $1 million cap excludes many loans to small businesses in high-cost areas from being counted as a CRA loan. This amount needs to be increased.
3. Small Farms. The threshold limit for a small farm needs to be increased. Farm loans in many areas exceed the $500,000 threshold.
4. MBS. Examiner treatment of MBS is unpredictable. Some examiners view MBS positively, while others view then negatively. Regulators must be consistent.
5. Disaster Areas. Today, banks receive CRA credit for activities in disaster areas outside of their Assessment Areas. Regulators need to specify how such activities translate into actual CRA credit. Will it be quantitative? Qualitative? Will it move the needle on a bank's CRA performance?
6. Non-Profit Donations. Banks should not be expected to micromanage nonprofits and document the precise area to which every dollar goes. If a nonprofit's mission is to serve an area that includes the bank's Assessment Area, the bank should not have to provide additional documentation regarding the specific geographies benefitted by particular funds.
7. ***[What other pain points has your bank identified as it relates to what counts for CRA credit?]***

F. Documentation Expectations. Examiners have inconsistent expectations regarding documentation standards. In addition, these unofficial standards are ever-changing. ***[Insert your bank's experience here].***

1. Any list of "pre-approved" CRA activities should provide streamlined documentation standards. Regulators should also provide an optional template for banks to use in documenting their community development activities.