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*Via Electronic Submission*

Legislative and Regulatory Activities Division  
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**Community Reinvestment Act Modernization  
Comments in Response to Advance Notice of Proposed Rulemaking  
Docket ID OCC-2018-0008**

Ladies and Gentlemen,

The Association of Military Banks of America (AMBA) is a trade association of banks located on and outside military installations that provide financial products, services, and education to military members, veterans, and their families. The regulations implementing the Community Reinvestment Act (CRA), in 12 C.F.R §25.41 (f), recognize military communities as a discrete group and their needs as deserving of financial institution support. The comments that follow discuss the CRA's original purpose, its application to military communities, and the challenges facing banks that provide financial services to those communities. Our comments culminate in a number of recommendations intended to tailor and update CRA regulations to better address the needs of this unique, deserving population.

**The CRA and Military Communities**

The original purpose of the Community Reinvestment Act was to encourage federally insured depositories – commercial banks and savings associations – to meet the credit needs of low-to-moderate income (LMI) populations within their geographically-defined communities in a manner consistent with their safe and sound operation. The federal regulations implementing the CRA require bank examiners, generally, to focus on the extent to which banks are engaged in community development and, specifically, to measure banks' performance in three discrete areas: lending, investment, and service.

The CRA's standards and grading criteria vary depending on banks' sizes and functions. Fundamentally, however, all banks are held to the common requirement that they must meet the credit needs of communities that are defined geographically. Assessment area delineation is addressed in 12 C.F.R. §25.41. The only exception to the CRA requirement that assessment areas be defined geographically is for "banks serving military personnel." Section 25.41 (f) implements 13 USC §2902(4), which allows banks "whose business



predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area” to define their entire deposit customer base as their “entire community.”

Although neither the statute nor the current CRA regulations expressly defines “community,” we believe this exception is an acknowledgment that the financial needs of military communities and demands of military service warrant special consideration. From AMBA's perspective, this exception is consistent with the CRA's original objective to serve the credit and deposit needs of traditionally underserved communities:

First, while today's military may not be a financially *underserved* community, it is often an *unfairly served* community. One of AMBA's goals is to promote responsible financial services to military communities. It is a necessary goal because so many military installations and personnel are targets of predatory financial entities and practices. Payday lenders, title lenders, used car dealers, pawn shops, and other unregulated sources of often-predatory loans form gauntlets outside the main gates of many military bases. Just as Congress envisioned banks as effective antidotes to the lack of credit availability in LMI communities, we believe they also provide the most effective defenses to military predatory lending.

Second, §25.41 (f) recognizes that military communities exist not only on military installations, they are also global. Thus, banks dedicated to serving military members must commit to serving them not only when they reside near their branches, but also when they are assigned or deployed around the world. The alternative, which would be necessary without §25.41 (f), would be to lose military customers – at least for CRA purposes – when they are reassigned or deployed. The fact that §25.41 (f) allows banks that “predominantly” serve military personnel to define their assessment areas to include those personnel wherever they are assigned is evidence of Congress' intent that the global “military community” is no less deserving of development.

Finally, it's important to understand some of the other financial characteristics of military communities that justify the CRA's special consideration. In the course of a military career, regardless of its length, service members and their families encounter unique financial challenges. Lifestyles that include moving every two-to-three years, family separation during deployments, coping with the physical risks and mental stresses associated with life-threatening duties, and the low pay relative to comparable civilian jobs often lead to a downward financial spiral of decreased incentive or ability to save money, “immediate satisfaction” mindsets with little thought given to long term financial goals, and short-term borrowing from high-cost lenders.<sup>1</sup> Because many of these characteristics do not change when a military member transitions from the military, we suggest below that the OCC should also include retirees and veterans when considering how banks should serve military and veteran communities.

Our comments address two primary areas of relevance to military banks and the military and veteran communities they serve: assessment area delineation and the financial services banks provide. Both are critical to incentivizing banks to provide the financial support our military and veteran communities need.

## **I. Assessment Area Delineation: Banks Serving Military Communities**

Banks that serve military communities can generally be divided into three categories: banks operating on military installations, banks operating outside military installations but that cater almost exclusively to the military, and banks operating outside military installations that have military members and families as customers. Although geography is one factor distinguishing these groups, all banks serving military personnel share a number of common attributes. Perhaps the most compelling common characteristic is the legal regime governing the provision of financial services to military personnel.

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<sup>1</sup> A. Pascual, *Why Are Payday Loans So Popular with the Military?* Am. Banker (July 11, 2018).

The Servicemembers Civil Relief Act (SCRA) and Military Lending Act (MLA) impose a large number of very specific limits on financial institutions that extend credit to military members. Examples include interest rate caps on loans to military members, disclosures that vary considerably from those provided to non-military borrowers, and judicial oversight of foreclosure or repossession of loan security. These unique legal and administrative requirements impose significant costs and burdens on banks that serve military customers – costs and burdens not shared by other banks.

#### **A. On-Base “Military Banks”**

On the expense side of the ledger, banks operating on military installations pay a substantial price for the privilege of serving military communities where they live and work. For many decades, the Department of Defense’s military banking program has relied on banks and credit unions operating on military installations to provide needed financial services, support, and education to military families. These financial institutions provide free financial services to all federal government entities and employees operating and working on the installation. The on-base bank also commits to provide financial education to the entire base population, regardless of their business relationships with the bank.

Not only are banks operating on installations subject to the MLA and SCRA requirements discussed above, they are also charged lease and other costs for the facilities from which they operate. Finally, the CRA also applies to them. In contrast, on-base credit unions, while also subject to the MLA and SCRA, are exempt from the CRA and do not pay facilities costs. As a result of this disparate treatment of banks and credit unions, banks are leaving military bases in increasing numbers.

On the revenue side of the ledger, in addition to the increased costs and legal requirements imposed on bank branches operating on military installations, their location also limits their ability to generate revenue. Following 9/11, security on military installations increased to the point where banks that previously served customers outside the base are no longer able to do so. On the one hand, this enhanced security prevents anyone not authorized to enter the base from seeking financial services from the on-base bank. On the other hand, because the on-base bank is obligated under its DoD operating agreement to provide only on-base financial services, it is unable to extend those services outside the base. Thus, for on-base banks in particular, the §25.41(f) exemption is critical.

**AMBA RECOMMENDATION #1: Bank branches operating on military installations should be presumed to satisfy the §25.41(f) geographic assessment area military exemption requirements.**

Such a presumption would achieve at least two important purposes. First, it would acknowledge that the on-base bank’s “community” is practically confined by its DoD operating agreement to customers and non-customers working on the base, customers who have base access, or customers who are deployed or assigned elsewhere. Second, it would ensure a “benefit” to these banks, offsetting some of the MLA, SCRA, and lease costs “burdens” they undertake to serve their military customers. At a time when banks are leaving bases, such a presumption might offer some incentive for them to stay or to fill existing vacancies.

#### **B. Off-Base “Military Banks” Catering Primarily to the Military Community**

In addition to banks with on-base branches, several banks have adopted a core mission to provide financial services exclusively or primarily to current and former military personnel and their families. USAA and First Command Bank are two AMBA members squarely in this category. Their corporate purposes are to serve the military regardless of where they are deployed or assigned and regardless of whether they are still serving in uniform. Although USAA is the on-base bank at the United States Military Academy at West Point, its business model is based primarily on a digital connection with its current and former military customers and their families. First Command Bank has no on-base branches; however, its

banking operations are also focused on providing financial services to current and former military members and their families.

Given the clear language of §25.41 (f), these banks and others with similar business models should easily fall within its scope. Yet, many banks report that some examiners have focused CRA assessments on the services they provide to the communities in the areas around their headquarters, branches, or deposit-taking ATMs. Their rationales are typically based on inconsistent interpretations of “predominantly” or “military personnel or their dependents” or the imputing of a requirement that a certain percentage of those military members must be LMI. On-base banks often encounter similar inconsistent interpretations or requirements.

In comments we provided to the Department of the Treasury for its recent CRA study, we recommended that the CRA regulations should “clarify and expand the application of §25.41 (f).” Treasury agreed, observing:

When considering the definition of assessment areas for military banks, Treasury recommends that the CRA regulators make it clear that if the requirements of 12 C.F.R. §25.41 (f) for military banks have been satisfied, the geographic area requirements do not apply.<sup>2</sup>

The statute, CRA regulations, and Treasury all agree that if §25.41 (f) applies, §§25.41 (a) – (e) do not. Our rationale supporting this recommendation included several suggested interpretations of or adjustments to both the regulation and CRA examinations:

First, the word “predominantly,” often used by CRA examiners to assess the relative number of military personnel and dependents among a bank’s total customer base, should also be interpreted as a measure of a bank’s commitment, mission, or business model to serve the military community exclusive of all other communities. If a bank satisfies either interpretation, it should qualify for §25.41 (f) exemption. Banks that provide and are committed to provide financial services only to the military community typically satisfy both aspects of this definition. In contrast, a bank that serves a diverse customer base that also includes military members and dependents would ordinarily not qualify under either part of this definition because the overall degree to which they provide financial services to the military is minimal in comparison to their entire deposit base and their mission is not to serve the military predominantly or exclusively.

Second, “military personnel or their dependents” should be interpreted to include not only currently-serving, active duty military personnel and dependents, it should also include individuals who have transitioned from active duty or who were but no longer qualify as dependents. Both on-base banks and banks catering almost exclusively to the military community interpret “military community” to include anyone who is serving or who has served in uniform and their families. Indeed, they all shared common characteristics while on active duty -- frequent moves, family separation, stressful and dangerous work, and lower comparative wages – characteristics which result in unique financial challenges that often survive transition. Confining “military personnel” to persons currently on active duty ignores these common and often-persisting challenges. It also ignores the fact that the arc of a military career inevitably takes all military customers from active duty to veteran, retired, or inactive Reserve or National Guard service. The same is true for “dependents,” most of whom lose that status when their military sponsor departs active duty or, if they are children, when they are emancipated. Over time, the proportion of all banks’ “military personnel or dependents” customers decreases as the number of veterans, retirees, inactive military personnel, and former dependents increases.

We believe these definitional concerns can be addressed in either of a couple of ways: The terms “military personnel or their dependents” might be defined at the time an individual becomes a bank

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<sup>2</sup> Memorandum for the Office of the Comptroller of the Currency, et. al., *Community Reinvestment Act – Findings and Recommendations*, 6 (April 3, 2018) (hereinafter, Treasury Memorandum)

customer. Alternatively, they might be interpreted to include veterans, retirees, inactive military, and former dependents. Either interpretation would allow military banks to keep their §25.41(f) exemption as their customer base matures. Failure to adopt either approach would lead to the illogical and unfair results of either denying the §25.41(f) exemption to banks unless they terminate customers when they leave active duty or requiring banks previously qualified under §25.41(f) to immediately adopt a geographic assessment area when their customer base is still geographically dispersed.

Finally, CRA examiners have incorrectly required some military banks to demonstrate that they serve LMI communities as a prerequisite to §25.41(f) qualification. Under the statute, these are separate considerations. An early step in any CRA assessment is to determine the scope of a bank's "entire community." For military banks satisfying the requirements of §25.41(f), their "entire community" is their "entire deposit customer base without regard to geographic proximity." Once a bank's "entire community" is defined, 12 USC §2903(a)(1) requires examiners to then "assess the institution's record of meeting the credit needs of the entire community, including low-and-moderate income neighborhoods." Thus, while it is appropriate under §25.41(e)(3) for examiners to consider whether a geographic assessment area "arbitrarily excludes low-to-moderate income geographies," §25.41(f) exempts qualified banks from this and all other geographic assessment area requirements.

**AMBA RECOMMENDATION #2: Off-base banks that cater primarily to the military community should qualify for the §25.41(f) exemption. Such banks' "business predominantly consists of serving the needs of military personnel who are not located within a defined geographic area."**

**In this context, we recommend that "predominantly" be interpreted to mean either a majority of military or dependent customers relative to a bank's total customer base or evidence of a bank's commitment, mission, or business model to serve the military community primarily or exclusively.**

**We further recommend that "military personnel or dependents" be interpreted as a "military community" that includes everyone within the arc of a military family's career: active duty military, inactive Reserve or National Guard, military retirees, veterans, dependents or former dependents.**

**Finally, we recommend that OCC adopt Treasury's formulation of the §25.41(f) exemption's effect: "If the requirements of 12 C.F.R. §25.41(f) for military banks have been satisfied, the geographic area requirements do not apply." This would preclude examiners from requiring banks to identify their LMI military customers – or to satisfy any other geographic assessment area requirement – as a prerequisite to applying the exemption.**

We hope these recommendations will result in allowing banks that cater primarily or exclusively to the broader military community to qualify for the §25.41(f) exemption and thereby consider their entire customer bases as their assessment areas.

### **C. Off-Base Banks with Military Customers**

The last category of banks as viewed from the perspective of assessment area delineation is the off-base bank that serves military customers. While these banks are neither on military installations nor have as their primary purpose the financial support of military communities, they provide important financial services to military personnel and their dependents. Because they do not qualify for the 12 C.F.R. §25.41(f) exemption, their CRA communities are defined geographically. Therefore, the extent to which they get credit at all for their support of military communities depends on the extent to which the CRA examiner considers such support to be CRA-eligible.

## II. CRA-Eligible Activities: Financial Services to the Military Community

In its memorandum reporting the results of its recent CRA study, Treasury discussed the lack of clarity regarding the kinds of financial services or products that qualify or should qualify for CRA credit.<sup>3</sup> Some activities have long been considered CRA-eligible; others, even some that are responsive to the needs of the communities banks serve, are often disqualified by CRA examiners. AMBA believes that the CRA regulations must clearly establish as CRA-eligible financial products and services that meet military community needs.

First, we concur in Treasury's recommendations regarding CRA eligibility of financial products and services:

Treasury recommends that any framework for CRA reform should consider several key elements including:

- Expansion of the types of loans, investments, and services eligible for CRA credit;
- Establishment of clearer standards for eligibility for CRA credit, with greater consistency and predictability across each of the regulators; and
- Simplified record-keeping procedures, designed to make eligibility updates more regular and timely.<sup>4</sup>

Second, in the military community context, these recommendations should translate into general guidelines CRA examiners can use to determine when and how specific bank activities should qualify for CRA credit. AMBA believes banks should receive CRA credit for ANY service they provide that promotes the financial readiness, stability, and health of military community members:

**AMBA RECOMMENDATION #3: Because the financial challenges military communities face are less dependent on income distinctions than in geographically-defined communities, we recommend that all financial services to the military community should be presumed to qualify for CRA credit, regardless of whether the recipient fits within a classic LMI category.**

This is a core concern for AMBA; our remaining recommendations are tailored according to the different degrees to which banks are focused on providing services to military communities.

### **A. On-Base and Off-Base "Military Banks"**

If a bank qualifies as a military bank either because its customer base is predominantly military, veteran, or dependent or because its branches are on military installations, more consideration needs to be given to the fact that the kinds of credit military populations need differ significantly from other LMI or non-LMI populations. Feedback from some of our members describes some of their concerns:

- Military members don't have home purchase or small business loans as primary loan product needs. It is difficult for a military-focused bank to make the required volume of traditional community development loans for CRA examinations.
- Large banks quickly seize all of the community development loan opportunities in many military bank assessment areas (when those areas are geographically defined; when the examiner doesn't allow the §25.41(f) exemption).

While military members do purchase homes and many veterans do apply for small business loans, by far the most important forms of credit for military communities are credit cards; small dollar, unsecured

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<sup>3</sup> See *Treasury Memorandum, supra* note 2, at 7.

<sup>4</sup> *Id.* at 8-9.

loans; and automobile loans. Several years ago, the FDIC's small dollar lending template was conceived, in large part, as a result of military banks extending such loans to their military populations. These loans have been perhaps the biggest single defense against the proliferation of payday lending and, thus, are the greatest community development contributions military banks make to their military communities. They should be recognized and weighted accordingly in the CRA examination process.

**AMBA RECOMMENDATION #4: Modify lending tests for §25.41(f) military banks by assigning more weight to credit cards, small dollar loans, and automobile loans and less weight to home mortgage, small business, and community development loans.**

The key consideration here is that every loan a military bank provides is one less loan provided by a predatory lender. This should be the impact assessed by CRA examiners when determining the community development value military banks provide to military communities.

In addition to personal lending, military banks – particularly those operating on military installations – are dedicated to providing financial education to the entire military community, not just their customers. Indeed, the DoD operating agreement governing on-base banks establishes financial education as a core service requirement. Financial education is typically considered a CRA-eligible activity. Because military banks extend that activity to military and veteran populations beyond their customer bases, AMBA believes it should be given significant weight.

**AMBA RECOMMENDATION #5: CRA regulations should establish financial education as a significant CRA activity for on-base banks obligated to provide it under their DoD operating agreements. Off-base military banks should also be given significant credit to the extent they, too, are engaged in providing financial education to the entire military community within and beyond their military customer bases.**

### ***B. All Banks with Military Customers***

While special CRA considerations exist for on-base and off-base military banks – banks that qualify for the §25.41(f) exemption – all banks that serve military customers should receive CRA credit for the services they provide their military customers. Earlier, we discussed the legal regime that limits and regulates the financial services banks can offer to their military customers. The Military Lending Act (MLA) and Servicemembers Civil Relief Act (SCRA) impose significant and often-costly additional compliance challenges upon banks that serve military members and dependents. These statutes are intended to prevent the kind of predatory practices that traditionally – and still – target military families. To the extent banks provide MLA and SCRA-compliant financial products and services, they help the recipients avoid falling prey to financial predators.

Many military families are financially challenged because it is difficult for the military spouse to find meaningful employment. When families move every two-to-three years, it's hard for military spouses to remain employed. Some banks offer employment to military spouses and sometimes offer continuous employment if the family is transferred to a base near one of their branches. AMBA believes banks offering employment to military spouses or that participate in programs designed to promote military spouse employment should receive CRA credit.

While it is true that not all recipients of these products are LMI, AMBA believes the statute allows CRA credit to be awarded for products and services that have "community development" impact in other than LMI community segments. This view is supported by the CRA Interagency Qs & As, which acknowledge that "the flexibility of performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues."<sup>5</sup> We believe that services to

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<sup>5</sup> FDIC Compliance Examination Manual, July 2016, §\_\_.12(g)-3.

military families, regardless of their LMI status or where they are located, provide a community development impact within the military community.

To the extent that the military families supported by bank services reside outside the bank's geographic assessment area, we believe the same rationale that permits CRA credit for investments in larger regions that include the bank's assessment area ought to apply here.<sup>6</sup> Indeed, because our armed forces protect our entire Nation, investment in their financial readiness is an investment that also benefits any bank's geographic assessment area.

**AMBA RECOMMENDATION #6: CRA regulations should provide for CRA credit to be given to any bank that extends MLA and SCRA-compliant financial products and services to military personnel and their dependents, wherever they reside and regardless of their LMI status. CRA credit should also be given to banks that employ military spouses or support programs promoting military spouse employment.**

In addition to financial services for military personnel and dependents, AMBA believes that such services to veterans should also qualify for CRA credit. Throughout this paper, we've discussed the financial challenges that face our military communities. Many of these challenges follow service members when they leave the military. Until Congress' recent establishment of the Blended Retirement System, military members who left the service before their defined benefit pension vested – normally at 20 years – departed with no retirement benefits beyond the money they were able to save. Under the BRS, military members now have a 401(k)-type defined contribution plan in addition to a reduced defined benefit plan. Because 2018 is the first year that BRS is available, the United States has generations of veterans who continue to experience financial challenges similar to or worse than they faced while on active duty. Additionally, many veterans are disabled or are otherwise unable to work in the kinds of jobs that generate sufficient income. While many of these veterans qualify as LMI, many also reside where they left the service – often outside the geographic assessment area of their bank.

Today, a number of banks across the United States have instituted or joined efforts to promote veteran employment. Some of these banks are committed to training and hiring veterans themselves, while others have created or participate in programs to train and hire veterans across many occupations. These are the kinds of efforts that should earn CRA credit, yet many do not because they extend to veteran populations outside the banks' geographic assessment areas.

Banks that provide financial support to veterans in any form should be given CRA credit regardless of where the veterans reside. Whether that support takes the form of a small business loan<sup>7</sup>, personal loan, or employment or training opportunities, AMBA believes the same rationale for extending CRA credit to military communities should also be applied to veterans.

**AMBA RECOMMENDATION #7: CRA regulations should provide for CRA credit to be given to any bank that extends financial services or supports training or employment services to veterans of the United States Armed Forces, wherever they reside.**

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<sup>6</sup> *Id.* at §\_\_12(h)-6.

<sup>7</sup> In a recent study, the Small Business Administration concluded that veterans are not getting the loans they need to start or grow businesses. "While the SBA's flagship 7(a) program has flourished in recent years, veteran entrepreneurs have benefited less than other business owners. Since 2010, SBA-guaranteed loans have increased by 48% for veteran borrowers, compared with an 82% increase for other borrowers." John Reosti, *Veterans Aren't Getting the Loans They Need to Start a Business*, *Am. Banker* (Nov. 9, 2018).

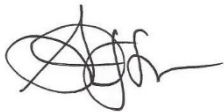


## **Conclusion**

When the CRA was enacted in 1977, our Nation had just emerged from Vietnam and lacked the respect and appreciation for military service that our military communities enjoy today. Although we suspect the OCC will receive many recommendations during this comment period based on how both banking and community development have changed since 1977, we firmly believe none are more important than the recommendations – like ours – that focus on the need to update the CRA regulations in ways that will encourage banks to meet the needs of America's military and veteran communities – communities that include everyone who is currently serving in uniform, has served in uniform, or is or has been a member of a military family.

Since 1977, our awareness and understanding of the financial challenges facing the military have evolved. So, too, must the CRA regulations. Our bottom line is that those regulations must be updated in ways that will encourage and incentivize banks to meet the needs of a highly mobile and very deserving community. Our recommendations are respectfully submitted with that ultimate objective in mind.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'S. Lepper', with a stylized, circular flourish at the beginning.

STEVEN J. LEPPER  
Major General, USAF (Ret.)  
President & CEO