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Louisa M. Quittman
Director, Financial Security (Consumer Policy)
US Department of the Treasury
1500 Pennsylvania Ave. NW, Room 1413
Washington, DC 20220

Dear Louisa,

Thank you again for inviting AMBA to participate in your review of the Treasury Department's Community Reinvestment Act regulations. Andia and I greatly appreciated the opportunity to join you and your colleagues in last week's conference call.

At the end of our call, you agreed that we could submit comments in writing. I hope the following thoughts – most of which we shared during our call – will be helpful to you and your team as you consider how the regulations might be modified to make them more relevant and effective.

CRA Purposes and AMBA's Objectives

I began my comments last week by describing AMBA's mission. We represent banks located on and outside military installations that provide financial products, services, and education to military members and military communities. One of our primary objectives over the past two years has been to find ways to keep at least one bank branch on each military installation. Over the past ten years, over one-third of military installations that previously had a bank no longer have one. The rising cost of operating on-base branches has been the primary reason banks have been leaving. The ultimate impact when a bank leaves a military installation is that the community no longer has access to a local bank that understands and can accommodate the challenges of military service and the financial requirements driven by the specific missions of the installation's military units.

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

The CRA's standards and grading criteria vary depending on the banks' size and function. As a general matter, 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 CFR §228.41. The only exception to the CRA requirement that assessment areas be defined geographically is for "banks serving military personnel." Section 228.41(f) 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 assessment area as their entire deposit customer base.

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 definitely an often-unfairly served community. One of AMBA's goals is to provide responsible financial services to military communities. It is a necessary objective because so many military installations and personnel are targets of predatory lenders. Payday lenders, title lenders, used car dealers, pawn shops, and other unregulated sources of often-predatory loans often 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 defense to military predatory lending.

Second, we believe §228.41(f) recognizes that military communities not only are rooted in 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 away from their branches. The alternative, which would be necessary without §228.41(f), would be to lose military customers – at least for CRA purposes – when they are reassigned or deployed. The fact that §228.41(f) allows banks that “predominantly” serve military personnel to define their assessment areas to include those personnel wherever they are assigned is evidence of our belief that the CRA has always recognized the “military community” as a community no less deserving of development even if it is not always geographically defined.

AMBA Suggestion #1: The CRA should incentivize banks to remain or locate branches on military installations.

AMBA respectfully requests that Treasury consider modifying its CRA regulation to encourage banks to remain on military installations or consider locating branches on installations not currently served by a bank. As I mentioned above, over one-third of military installations are no longer served by an on-base bank. While §228.41(f) somewhat mitigates the impact of this fact by allowing some military banks to define their military customer base as their assessment area, it fails to account for the non-customer military personnel who are no longer served when an on-base bank closes its doors. Department of Defense regulations require on-base banks to serve not only their military customers, but also military non-customers on the installation. In this respect, the military community is defined geographically: the military installation.

As I mentioned above, having a bank on a military installation helps combat predatory lending, which tends to be geographically-focused. Incentivizing banks to enter or remain on military bases can be achieved in a couple of ways:

- First, §228.41(f) might be modified to extend its assessment area exception to banks on military installations. Not only would this acknowledge the community benefits on-base banks provide, it would also recognize the fact that since 9/11, military installations are secure, closed communities. In other words, banks on military bases can't really serve local communities outside those bases. Relieving on-base branches of their CRA requirements to serve off-base LMI communities would eliminate a reason for leaving.
- Other ways of incentivizing banks to put branches on military bases include giving them additional CRA credit or presumptions for financial services performed on bases. For example, on-base banks often find it difficult to prove that military installations are LMI communities. Not all military members live on base; not all on-base residents are LMI. Because of the rapid fluctuation in these on-base communities, they are moving targets. A presumption that military installations are qualified CRA communities would give on-base banks one less concern during their CRA examinations and would be consistent with the purpose of §228.41(f).

AMBA Suggestion #2: Clarify and expand the application of §228.41(f).

Feedback from a number of our member banks suggests that the §228.41 (f) military bank exception to the geographic assessment area requirement is inconsistently interpreted and applied in the field.

First, AMBA believes that if §228.41 (f) applies to a bank, §§228.41 (a) and (c) should not. The words "notwithstanding the requirements of this section" should mean that if (f) is satisfied, the other requirements requiring geographic assessment area delineation should not apply. Apparently, this interpretation is not uniformly accepted and there is no existing clarifying guidance. In fact, several of our banks have experienced situations where one branch on a military installation was given the exemption while another branch on another installation was examined based on a geographic test.

Second, banks that "predominantly" serve the needs of "military personnel or their dependents" run into two challenges. The word "predominantly" suggests that at least a majority of customers must be military personnel or dependents. Confining this customer base to military personnel or dependents ignores the reality that the arc of a military career takes most military customers from active duty to veteran or retired status at some point after they joined the bank. A similar evolution applies to military dependents, most of whom lose their dependent status when their sponsor departs active duty or, if they are children, when they leave home. Over time, the proportion of military customers decreases as veteran customers increase.

AMBA believes these definitional concerns can be addressed in a couple of ways. First, the terms "military personnel or their dependents" might be defined at the time the individual became a customer of the bank. In the alternative, these terms might be interpreted to include veterans and former dependents. Either interpretation would allow military banks to keep their §228.41 (f) exemption as their customer base matures. Failure to adopt either approach would lead to the illogical and unfair result of denying the exemption to banks unless they terminate customers when they leave active duty or requiring banks without a geographic assessment area to immediately adopt one when their customer base is still geographically dispersed.

AMBA Suggestion #3: Modify the lending test for military banks by assigning more weight to small dollar loans and less weight to home mortgage, small business, and community development loans.

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 populations.

Feedback from some of our members describes 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 community development loans for CRA examinations.
- Large banks quickly seize all the community development loan opportunities in many military bank assessment areas (when those areas are geographically defined; when the examiner doesn't allow the §228.41 (f) exemption).
- Military banks held to a geographic rather than a customer assessment area are "penalized" for having significant out-of-assessment area consumer credit volume. The out-of-area credit, of course, is often extended to military members who have departed the area where they opened their accounts but who still bank remotely with their military banks.

This issue arises as yet another result of the differences between the military and other LMI communities. While military members do purchase homes and many veterans do apply for small business loans, by far the more important forms of credit for all of them are small dollar, unsecured 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 Suggestion #4: AMBA joins the rest of the banking industry in asking federal regulators to amend its regulations or seek legislative amendments to account for the two most significant changes in the financial industry in the 40 years since the CRA was passed: the emergence of the megabank and the rise of digital banking.

While the feedback we received from our military bank members varied somewhat on the issues discussed above, there was consensus that bank mergers and the proliferation of internet banking have changed both the need for and the application of the CRA.

In 2009, the Federal Reserve Bank of San Francisco published a paper entitled "The CRA within a Changing Financial Landscape."¹ One of the issues the authors considered was the impact of the emergence of megabanks on CRA lending. They started with the fact that in 1977, "there were no nationwide depository institutions. By 2007, most of the top 25 organizations had truly become national organizations."² From 1997 to 2007, the percentage of consumer loan dollars in the largest 25 banks rose from 15 to 70 percent. Hence, the observation by one AMBA's banks that "large banks quickly seize up all the [community development] loan opportunities in the majority of our assessment areas. As a bank with a small footprint in the majority of our [assessment areas], we very rarely have an opportunity to fund a CD qualified loan." Add the fact, also considered in the Federal Reserve Bank paper, that non-CRA-regulated institutions such as credit unions are also increasing their lending in CRA-qualified areas, and you have a significant CRA compliance difficulty our small military banks face and from which they hope for relief.

In 1998, internet banking was in its infancy but many observers already envisioned the disruption it would inflict on traditional banking. In that year, at the 20th anniversary of the CRA, an obscure law journal article discussed the potential impact on-line banking would have on the law's continued need and application.³ After discussing the rise of internet banking and the CRA's purposes, the author suggested that since internet banking would allow any bank to maintain a customer base that was no longer tied to a particular geographic location, the federal government might adapt "the military community alternative delineation of assessment area" in 12 CFR §228.41(f) as a potential model. He added that "this approach would allow an on-line bank without a physical presence to define its assessment area as consisting of its on-line customer base."⁴

Of course, the rise of internet banking has exceeded most 1998 forecasts. Today, anyone can bank anywhere. This fact raises the question whether geography is still relevant in a CRA context. The article suggested that "equal access" by LMI customers should replace geography in future CRA revisions: the CRA should encourage all banks to afford equal access by everyone to all its products and services, regardless of where the customers reside.⁵ Such an approach would be yet another way to address the problems military banks held to geographic standards face when dealing with a far-flung military customer base.

Again, thank you for the opportunity to comment on your review of the CRA regulations. We hope our suggestions will help you better understand the peculiar challenges military banks face. Please don't hesitate to contact us if you have any questions.

Steve

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

¹ The CRA within a Changing Financial Landscape, *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*, Community Development Investment Review, Vol. 4, Issue 1 (Federal Reserve Bank of San Francisco, February 2009).

² *Id.* at 36.

³ Thomas W. Beetham, *The Community Reinvestment Act and Internet Banks: Redefining the Community*, 39 Boston Coll. L. Rev., 911 (1998).

⁴ *Id.* at 929.

⁵ *Id.* at 928.