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Via Electronic Submission

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Community Reinvestment Act Regulations Comments in Response to Advance Notice of Proposed Rulemaking Docket No. R-1723

Ladies and Gentlemen,

The Association of Military Banks of America (AMBA) respectfully offers the following comments in response to the Federal Reserve Board's Advance Notice of Proposed Rulemaking (ANPR) to modernize the Board's Community Reinvestment Act regulatory and supervisory framework.

Introduction

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 Federal Reserve's regulations implementing the Community Reinvestment Act (CRA), Regulation BB, 12 C.F.R. 228.41 (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, the challenges facing banks that provide financial services to those communities, and the ways in which the CRA has and has not addressed these issues. 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.



UNITED
FOR THOSE
WHO SERVE



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, banks are held to a common requirement that they must meet the credit needs of communities that are defined geographically. The only exception to the CRA requirement that assessment areas be defined geographically is for "banks serving military personnel." Assessment area delineation is addressed in 12 C.F.R. §228.41. Section 228.41 (f) implements 12 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 Fed's current CRA regulations expressly defines "community," we believe this statutory 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 in three ways 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, §228.41 (f) recognizes that military communities exist not only on military installations, they are 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 §228.41 (f), would be that banks would 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 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 considerations. 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.¹ Because many of these characteristics do not change when a military member transitions from the military, we suggested to the OCC as it revised its CRA regulations that it should also include retirees and veterans when considering how banks should serve military and veteran communities.

Our comments to the Federal Reserve Board address two primary areas relevant 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. Defining “Military Banks”

AMBA is pleased that the OCC’s revised regulations subtly but significantly refine the military exemption established in 12 USC §2902(4) and currently implemented in Regulation BB at 12 CFR §228.41 (f).

AMBA Recommendation #1: We urge the Fed to adopt the OCC’s “military bank” definition so that both agencies define military banks in the same way:

For the first time, the OCC defined the term “military bank” in its new regulations (12 CFR §25.03). We greatly appreciate its acknowledgment that some American banks are focused on providing financial services to our Nation’s military.

12 CFR §25.03 Definitions.

For purposes of this part, the following definitions apply:

...

Military Bank means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Army, Navy, Marine Corp (sic), Air Force, and Coast Guard) or dependents of military personnel. A bank whose business predominately consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

An important, positive change is that **the OCC’s new definition of “military bank” broadens the definition of “military personnel” to include those “who serve or have served in the Armed Forces (including the U.S. Army, Navy, Marine Corp[s](sic), Air Force, and Coast Guard) or dependents of military personnel.”** We argued in our original OCC comments that its proposed regulations should recognize that veterans and members of our National Guard and Reserve forces remain members of the military community even when they are no longer on active duty. That the OCC agreed will ultimately avoid many of the problems we identified. We urge the Fed to adopt the OCC’s approach.

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

We also appreciate that **the OCC's definition of "military bank" further defines "predominantly" to mean "a bank whose most important customer group is military personnel or their dependents."** We believe this transforms 12 USC §2902(4) from a quantitative to a qualitative threshold. As we proposed in our OCC comments, this new qualification should lead to extension of the "military bank" exemption to banks with a "commitment, mission, or business model to serve the military community exclusive of all other communities." The challenge going forward will be to educate examiners on the importance and relevance of this subtle, important change.

Finally, the OCC's proposed regulations required that a "military bank will only be evaluated based on its entire deposit customer base at the bank level under §25.12." While we considered this a positive step, we also expressed concern that because the proposed regulations neither expressly listed qualifying activities in military and veteran communities nor described how military banks will be evaluated, it would be difficult for military banks to score appropriately in future CRA evaluations without engaging in qualifying activities outside their deposit customer bases. **OCC accepted our comments and revised its language, now at 12 CFR §25.09(e), to require that a "military bank will only be evaluated under §25.13(c)."** In its comments, OCC stated its belief that "the general performance standards are sufficiently flexible so that separate performance standards for military banks are not necessary." We believe this resolves our concerns and **urge the Fed to adopt this OCC language that we hope will preclude bank branches on military installations from being assessed using geographic assessment area criteria.**

Three categories of banks fall within the OCC's "military bank" definition. They vary, from greatest to least, by the degree to which the definition applies:

1. Banks that cater primarily to the military;
2. Banks operating on military installations; and
3. Banks operating outside military installations that have military members, veterans, and families as customers.

A. Banks Catering Primarily to the Military Community

All banks serving military personnel share a number of attributes. Perhaps the most compelling common characteristic is the legal regime governing the provision of financial services to military personnel. 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 banks with few or no military customers.

Several US 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 in this category. Their corporate purposes include serving 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 12 CFR §228.41 (f) and the OCC's new definition of military banks at 12 CFR §25.03, these banks and others with similar business models should easily fall within their scope. Yet, some military banks report that CRA examiners have held them to geographic assessment area standards. 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.² On-base banks often encounter similar inconsistent interpretations or requirements. We believe these concerns can be easily resolved if all the federal banking regulators adopt the OCC's definition of "military banks."

B. On-Base 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, there is diminishing reason for banks to continue operating on-base branches. The most important factor inhibiting revenue generation is location. Following 9/11, security on military installations increased to the point where on-base banks that previously also 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 §228.41 (f) exemption is critical.

² In comments AMBA provided to the Department of the Treasury for its 2018 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.

AMBA RECOMMENDATION #2: Bank branches operating on military installations should be presumed to satisfy the §228.41(f) requirements for exemption from geographic area CRA assessment.

Such a presumption would achieve at least two important purposes. First, it would acknowledge that the on-base bank's "community" is legally and practically confined by its DoD operating agreement and location 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.

C. Off-Base Banks with Military Customers

The last category of banks 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 also provide important financial services to military personnel and their dependents. Because they do not qualify for the 12 C.F.R. §228.41(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 2018 CRA study, Treasury discussed the lack of clarity regarding the kinds of financial services or products that qualify or should qualify for CRA credit.³ 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 Fed's 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.⁴

³ See *Treasury Memorandum*, *supra* note 2, at 7.

⁴ *Id.* at 8-9.

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 that promotes the financial readiness, stability, and health of military community members:

Finally, we are pleased that the OCC's new CRA regulations more clearly define and describe CRA-qualifying activities. The fact that they specifically include products like small business loans and loans to individuals and entities in Indian country suggests that the OCC is receptive to the ideas that not all qualifying activities need be directed to LMI recipients⁵ and that "qualifying activities" can be used to incentivize bank behavior. We believe both ideas should apply to military banking. That is possible, however, only if products and services military banks provide are included in the OCC regulations' "Qualifying Activities Illustrative List" and qualify for CRA credit under the Fed's ultimate regulation revisions.

AMBA has consistently expressed concern that, despite the expansion of the "military bank" definition, the lack of tailored qualifying activities in the OCC's new and Fed's current CRA regulations still makes it difficult for military banks to earn appropriate CRA performance ratings. We urge the Fed to allow military banks to satisfy CRA requirements without having to engage in activities outside or inconsistent with the needs of their deposit customer bases, to incentivize the location of branches on military installations, and to enhance financial services they offer to our Nation's military and veteran populations.

AMBA RECOMMENDATION #3: Because the financial challenges military and veteran communities face are less dependent on income distinctions than in communities defined geographically, we recommend that all financial services to the military and veteran communities 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 and one that the OCC did not adequately address in its new regulations.

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 and veteran populations need differ from other LMI or non-LMI populations. Feedback from some of our members describes some of their concerns:

⁵ Although AMBA acknowledges that not all military members are LMI, we also believe that military banks should benefit from the same presumption credit unions enjoy that "the majority of military personnel would qualify as low-income members." This conclusion from the NCUA Chief Economist is the foundation of NCUA's May 2020 decision to allow military personnel to be considered as LMI customers in determining whether a credit union qualifies for the "low-income designation." Such designation is a CRA analog that relieves qualifying credit unions from otherwise-onerous operational limitations. See NCUA Letter to Credit Unions No. 20-CU-16, *Chartering/Field of Membership*, May 2020.

- 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 §228.41(f) exemption).

While military members do purchase homes and some veterans do apply for small business loans, by far the most important forms of credit for military communities are credit cards; small dollar, unsecured loans; and automobile loans. Several years ago, the FDIC's small dollar lending template was conceived, in 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 have made to their military communities. They should be recognized and weighted accordingly in the CRA examination process.

AMBA RECOMMENDATION #4: Modify lending tests for §228.41(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 and Veteran Customers

While special CRA considerations exist for on-base and off-base military banks – banks that qualify for the §228.41(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 military spouses to find meaningful employment. When families move every two-to-three years, it's hard for military spouses to remain employed. Some banks offer them employment that sometimes continues 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 2016 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."⁶ We believe that services to 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.⁷ 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: The Fed's 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. Again, the new OCC definition of "military bank" includes veterans.

⁶ FDIC Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment, July 25, 2016, §__12(g)-3, 81 Fed. Reg. 48505 (2016) at 48525.

⁷ *Id.* at §__12(h)-6; 48529.

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 banks' geographic assessment areas.

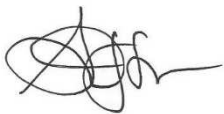
Banks that provide financial support to veterans in any form should be given CRA credit regardless of where the veterans reside. Whether that support takes the form of a small business loan⁸, personal loan, or employment or training opportunities, AMBA believes the same rationale for extending CRA credit 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.

Conclusion

When the CRA was enacted in 1977, our Nation had just emerged from Vietnam and many Americans lacked the respect and appreciation for military service that our military communities enjoy today. Although we suspect the Fed 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 the OCC recently acknowledged 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.



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President & CEO

⁸ 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).