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Louisa Quittman
Office of Financial Education and Financial Access
U. S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Re: Financial Access Activities
Section 1204 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Quittman:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment to the Department of the Treasury on ways to design, implement and administer certain financial access activities authorized in section 1204 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA 1204).

Briefly, DFA 1204 authorizes Treasury to establish a multi-year program of grants, cooperative agreements, financial agency agreements and similar contracts or undertakings to promote initiatives designed to help low- or moderate-income (LMI) individuals establish accounts with federally insured depository institutions that meet their financial needs as well as improve access to these accounts on reasonable terms. When meeting these goals, eligible providers may offer products such as include small-dollar value loans and provide financial education and counseling to help LMI individuals conduct transactions and manage accounts.

ABA sees this comment opportunity as a way to set the stage for future implementation efforts. We therefore begin at a fundamental level and will pledge our engagement at more detailed levels in the future as Treasury proceeds toward concrete implementation of DFA 1204.

Three Guiding Principles

ABA believes that three fundamental principles should guide Treasury's section 1204 program:

- **Enable mainstream access.** Initiatives should be directed toward providing unbanked and under-banked consumers mainstream financial products and services and not encourage steering those consumers into products segregated by their LMI status.
- **Empower consumer responsibility.** Financial education initiatives should focus on helping consumers to be responsible for their financial choices and performance.
- **Facilitate durable business solutions.** Initiatives must be designed to achieve long-term business success by coupling fair investment returns with responsiveness to market demand in models that can be readily replicated by depository institutions in a range of communities.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

In addition, ABA believes that there are further efforts that can be made to improve the effectiveness of DFA 1204 initiatives, including clearing the way by reducing regulatory barriers, recognizing achievement through more flexible application of the Community Reinvestment Act (CRA), and spreading the word about the resources that can be leveraged to give new programs a better chance to succeed.

ABA Comments

Enable Mainstream Access – Do Not Segregate Consumers into Separate Classes

ABA members welcome efforts to expand markets for profitable services that respond to the convenience and needs of our communities and its citizens. In fact, many bankers already offer programs and products that can be used for unbanked and under-banked consumers.

However, no Treasury program should fund an initiative that segregates a segment of the population into a separate class based on group status because separate is clearly not equal. When the Department of Defense was taking steps to implement what is more widely known as the Talent Amendment, section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007[2], the final rules were crafted to ensure that servicemembers and their families stayed in the mainstream and did not become identified in any way as second-class citizens.

When financial products and services are designed to expand financial access, they should be available to all qualifying consumers. Any Treasury program initiative must avoid describing accounts as tailored for LMI customers. This will only produce second-class customers and further undermine the initiative's chance of success. Labeling an account as one dedicated to LMI consumers will invite segregation and steering based on customer income levels. Such action risks illegally discriminating against customers, erodes efforts to integrate under-banked customers into mainstream financial services and alienates emerging market segments that banks seek to penetrate.

Americans have just experienced the results of identifying LMI individuals as best steered to interest-only, pick a payment, teaser rates or high LTV loans—all pitched to supposedly make housing more affordable. Surely, the initiatives funded under DFA 1204 must disavow product pitches based on *the provider deciding* "this is the loan for you because you are LMI."

Mainstream financial services offer the most competitive environment within which to shop and reward individual consumer choice. Therefore, DFA 1204 must be applied to enable and encourage mainstream access.

Empower Consumer Responsibility

The OECD G-20 High-Level Principles on Financial Consumer Protection state that it is essential when protecting consumer rights to recognize "the fact that these rights do come with consumer responsibilities."[3] Raj Date, Special Advisor to the Secretary of Treasury, has stated that "no one can deny that borrowers must be responsible for their financial decisions [and] that is a bedrock premise of the Bureau's approach to markets."[4] It is upon this bedrock premise that DFA 1204 initiatives to expand access to mainstream financial services by the under-banked must be built. In other words, the focus of financial education in Treasury sponsored programs must be on the ability to empower consumers to behave responsibly in their access to, and use of, financial products and services.

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[2] http://www.fdic.gov/news/news/financial/2007/fil07083.html

[3] OECD G-20 High-Level Principles on Financial Consumer Protection, October 2011, at p. 4. http://www.oecd.org/dataoecd/58/26/48892010.pdf

[4] Remarks of Raj Date, American Bankers' Regulatory Symposium, September 20, 2011. http://www.consumerfinance.gov/speech/remarks-by-raj-date-at-american-bankers-regulatory-symposium/

The Financial Stability Board (FSB) expresses it this way: "*Consumer protection is not about protecting consumers from bad decisions* but about enabling consumers to make informed decisions in a marketplace free of deception and abuse. Financial education, financial literacy and consumer protection policies should form the foundation of any regulatory and supervisory framework for protecting consumers particularly amid efforts to expand financial inclusion by reaching "unbanked" customers."[5]

As the FSB implies, only through education are consumers empowered to protect themselves against "bad decisions." Financial education must underscore that it is the customer's responsibility to decide correctly in the absence of deception or abuse and to utilize products appropriately to vindicate the value of their choice. Each customer is responsible for weighing the benefits, costs and risks of the options they explore against the preferences, tolerances and resources they have when deciding whether one product is preferred over another. Once a choice is made, customers' preferences are revealed by their conduct—expressing that a product is valued by selecting it and making repeated use of it.

Consequently, in supporting financial education initiatives under DFA 1204, Treasury must expect such undertakings to contribute to making customers responsible for their financial choices.

Facilitate Durable Business Solutions

Treasury funded initiatives under DFA 1204 should work toward achieving long-term solutions—which in reality can only be accomplished when products are responsive to real market demand and where the provider can derive a fair return on its investment. Only these business solutions will be durable.

To develop products that meet real market demand, product design must account for the kind of uses that a market segment seeks. Transaction accounts may be shaped based on the features they offer that appeal to particular prospective customers. Knowing the features that will be responsive to a particular segment isn't a matter of projecting onto a consumer what others think most useful, but actually studying the needs and behaviors of the group in question and understanding their perspectives, preferences and predispositions.

One element that is sometimes overlooked is the distinction between those who do not understand consumer financial products and services through lack of experience, lack of sophistication or language or cultural barriers which will require one approach and those individuals who have developed bad behaviors and need to change those behaviors and require a different approach. DFA 1204 initiatives can encourage bankers and community members to collaborate to identify which account features are responsive to the needs of different groups of customers and are in sufficient demand to serve as the foundation for developing viable products.

To obtain a fair return on investment, the product itself must be profitable or form a part of a profitable strategy. Loss leaders must actually lead to profit somewhere in the relationship. Money losing products do not make it up in volume. Products dependent on government subsidies are only as dependable as the next appropriations cycle.

Developing durable business solutions is not easy for any market segment. Historically, there are products designed at each level or segment of the market that have failed—if not everywhere, at least for significant providers or groups of providers in many market venues. Consequently business model success for serving the unbanked or under-banked will be challenging and it is unlikely that *all* such consumers can be attracted to banks or converted into remunerative customers. Nevertheless, it must be a fundamental principle that only durable solutions can deliver reliable results in penetrating this market. This is where Treasury assistance through demonstration initiatives can have its greatest impact on improving competitive access.

[5] Financial Stability Board, Consumer Finance Protection with particular focus on credit, October 26, 2011 at p. 3.

To foster wider adoption of demonstrated durable business solutions, initiatives should result in templates or other information that enable providers to readily replicate the successful new product or service in their respective communities. Where possible, publicizing models or pilots that have been found to work and that have experienced success can simplify adoption of these programs.

For example, special templates and requirements for micro-loans for small businesses or small business start-ups might be created. Since these programs can be particularly labor intensive, and since this is an area where partnerships with non-profits can be useful, regulators could also help by vetting and maintaining directories of non-profit contacts within different regions and ensure examiners make this information available to financial institutions.

Clear the way. Recognize success. Spread the word.

In addition to following the three fundamental principles, ABA believes that Treasury and other interested agencies can further development of expanded access to depository institution products and services by pursuing three additional paths to help increase the likelihood of success for DFA 1204 initiatives or to leverage the success that such initiatives achieve.

First, *clear the way* by eliminating regulatory barriers that inhibits providers from offering appropriate products and services to under-served customers. Simplifying burdensome disclosures or eliminating cumbersome compliance reviews can help pave the way for product innovation without jeopardizing underlying customer protections.

For example, payroll programs are a resource that can provide access to low- and moderate-income consumers but restrictions like the recent implementation of changes to Regulation E by the Federal Reserve that limit what qualify as prepaid programs and a recent FinCEN rule that limits the utility of prepaid payroll programs undermine these efforts. Another challenge often identified is restrictions on identifying and verifying the identity of consumers who want to establish bank accounts; where Customer Identification Programs (CIP) under section 326 of the Patriot Act operate to alienate potential customers, additional guidance from supervisors on alternative and acceptable forms of identification would be useful – along these lines, Treasury should work closely with FinCEN and the banking regulators to develop appropriate guidance.

Overall, policymakers should identify restrictions, eliminate those that they can and, where needed, call them to the attention of legislators to address. A simple first step, though, is to better train examiners, including state banking departments, so they understand and support new products and services. One of the most difficult challenges that bankers report are the difficulty of getting examiners to acknowledge the positive work that they are doing where all too often, examiners refuse to recognize positive steps because they do not fit into a simple little checklist that examiners can quickly check-off.

Second, *recognize success* by expanding CRA credit for retail services to under-served markets and for financial literacy courses.

For example, there are many opportunities for banks to work with local school districts and local colleges, especially community colleges. Banks should be encouraged to participate in these programs, including appropriate incentives for participation. To help encourage bankers to participate, better clarity on the types of financial education that are readily accepted for CRA purposes would be extremely helpful since there is a great deal of confusion about what financial literacy programs are acceptable and which are not. Equally critical is that banking regulators and other government authorities, including local school boards, should be encouraged to implement these partnerships.

Third, *spread the word* by publicizing existing programs designed to expand financial access. There are many worthwhile programs that already exist but are not widely known. For example, the CDFI fund has many helpful programs, including outreach programs for Native Americans. Equally important is training for banks about the many programs that are out there – including assistance on how to access to these programs through webinars, seminars and other outreach; information about better outreach on opportunities for Low Income Housing Tax Credits, New Markets Tax Credits and micro-lending are all important, since not enough mainstream depository institutions fully understand how these programs operate and how they can be successfully used.

As noted, many banks across the United States already offer products and services that can be adapted to expand financial access and to integrate unbanked consumers into the banking system. Many banks offer funds transfer services, free or low-cost deposit accounts, affordable small-dollar loan programs, small lines of credit, and other products to reach out to unbanked individuals. Many banks have branches or ATMs in neighborhoods with high concentrations of unbanked individuals, partner with local schools to provide financial education in the classroom and offer education programs for the unbanked. Many banks make donations of time and money to organizations that seek to help these individuals as well. While they may not be widely advertised, these products and services do exist. Therefore, one step that Treasury might take is to publicize these programs by working with the regulators who are identifying these programs in CRA exams.

In addition, banks can partner with local non-profit organizations to help identify community resources and understand community member needs. However, some banks are not aware of the opportunities that are available from some of these partnerships. To that end, the Treasury and banking regulators could serve as a clearing house for information about partnering programs that are available, including information about options, challenges and positive outcomes, in a regular publication or website that banks could easily access.

Conclusion

Implementation of DFA 1204 initiatives has its future ahead of itself. ABA sees this Notice as the prelude to that future and consequently we have offered our input on important guiding principles that should be applied to DFA 1204 programs.

ABA believes that there are many positive steps that Treasury can take to encourage wider access to mainstream financial products and services. Financial education should be at the core of any program, but there is no one-size-fits-all. Similarly, the reasons that consumers turn to alternative providers or experience problems must be understood. Where regulatory barriers exist, they should be identified and eliminated or changed. And, where possible, the federal government and Treasury can serve as a resource to facilitate information for bankers, consumers and non-profits and bring interested parties together.

The ABA has a long experience in promoting financial literacy and we certainly look forward to working with Treasury to develop beneficial programs that build on existing successes to expand access in reasonable ways to financial products and services. Going forward ABA and its members are prepared to make suggestions on specific program design and development as well as helping encourage participation in initiatives that are funded.

Sincerely,

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