SallieMae Bank
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July 30, 2009

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20459

Via E-mail: Comments@FDIC.gov

Re: Proposed Rulemaking Revising Rules Implementing the Community Reinvestment Act, RIN number 3064-AD45

Dear Mr. Feldman:

This letter is submitted by Sallie Mae Bank in response to the publication by the Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation ("FDIC"); and Office of Thrift Supervision, Treasury (collectively known as "the Agencies") in connection with proposed rulemaking, 74 Fed. Reg. 31209 (the "Proposed Rule"), revising the rules implementing the Community Reinvestment Act ("CRA"). We appreciate the opportunity to provide comments on the proposal.

Sallie Mae Bank (the "Bank") is a Utah industrial bank headquartered in Murray, Utah. The Bank is a wholly-owned subsidiary of SLM Corporation ("Sallie Mae"), the nation's leading provider of student loans and administrator of college savings plans, which has helped millions of Americans achieve their dream of a higher education. Sallie Mae provides federal and private student loans for both undergraduate and graduate students and their parents, as well as loans for elementary and secondary education and tutorial programs.[1] Sallie Mae Bank funds many of these loans under a variety of educational loan programs nationwide.

The Bank recognizes and welcomes its responsibilities under the CRA to identify and assist in meeting the credit needs of its community. The Bank developed a CRA strategic plan in order to satisfy its CRA obligations, the most recent version of which was approved by the FDIC on June 9, 2009. Because the Bank's business is primarily to fund, deliver, and service education loans

[1] In addition, Sallie Mae offers comprehensive information and resources to assist students, parents, and guidance professionals with the financial aid process. Sallie Mae owns or manages student loans for 10 million customers and through its Upromise affiliates, the company also manages more than $17.5 billion in 529 college-savings plans, and is a major, private source of college funding contributions in America with 10 million members and $450 million in member rewards. Sallie Mae employs approximately 8,000 individuals at offices nationwide.

for students and their parents, its CRA strategic plan relies primarily on education loans and includes, among other things, educational lending, scholarships and finance-related education services.

I. Introduction

As noted in the comment letter submitted by the Community Bankers Association ("CBA"), the CRA is not a compliance statute; but is instead a means of encouraging banks to help meet the credit needs of their communities subject to safe and sound lending. Thus, Sallie Mae Bank agrees with the position taken by the CBA that unnecessarily detailed technical requirements should be kept to a minimum and flexibility and innovation should be encouraged. We, likewise, recommend that the final rule be designed in a manner that best encourages low-cost lending to help meet the education financing needs of low- and moderate-income ("LMI") borrowers, while not imposing restrictive technical requirements on banks that would impede that objective.

To that end, and as discussed in greater detail below, the revisions to the Proposed Rule that Sallie Mae Bank advocates are designed to ensure that the final rule is broad enough to encompass a wide range of education lending to LMI borrowers, including through: private loans made at all levels of education (including higher education, elementary and secondary education and tutorial programs); loans to attend accredited and unaccredited institutions; originated and purchased loans; and closed-end, open-end, secured and unsecured loans. We believe that this approach is consistent with both objectives of the CRA, to ensure that banks meet the credit needs of their local communities in accordance with sound financial practices, and the stated purpose of the Higher Education Opportunity Act ("HEOA"), to provide incentives under the CRA to financial institutions for making low-cost education loans to low-income borrowers.

II. All Types of Private Loans Should be Considered for CRA Purposes

The Proposed Rule solicits comments on whether "private loans not made, insured, or guaranteed under a Federal, State, or local education program" should be considered for CRA purposes. Sallie Mae Bank believes that such private loans absolutely should be considered for CRA purposes for a number of reasons. First, under the CRA and its implementing rules, banks may earn CRA credit for mortgage and other loans without distinction between loans that are governmentally-backed and those that are not. We see no reason to treat the universe of student loans differently by allowing banks to earn CRA credit for governmentally-backed student loans but not private non-guaranteed student loans. This position is supported by the fact that governmentally-backed student loans and non-governmentally-backed student loans are treated equally under a broad range of applicable laws, including bankruptcy, the Gramm-Leach-Bliley Act and Regulation P, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, Regulation E, Regulation B, the USA PATRIOT Act, the Bank Secrecy Act, the Telephone Consumer Protection Act, Telemarketing Sales Rule just to name a few.

Second, by design, the purpose of *all* private education lending (whether backed by the government or not) is to assist parents and students in financing education costs. Thus, the purposes of all student lending (whether government-backed or not) is precisely in line with the objective of the CRA, which is to ensure that banks meet the credit needs of their local

communities in accordance with sound financial practices, and the objective of the HEOA, which is to provide incentives under the CRA to financial institutions for making low-cost education loans to low-income borrowers.

Third, many students and parents are not able to finance education costs *solely* though federal, state or local loan programs. Therefore, private loans not backed by the government offer an important – and often essential – additional source of funding to enable students and parents to finance education costs. These private loans serve a vital community need by offering gap funding to a significant segment of the market, which are often LMI borrowers. The importance of this function in helping to meet the education needs of the community should not be discounted simply because the loans are "not made, insured, or guaranteed under a Federal, State, or local education program."

Accordingly, all types of private loans should be considered for CRA credit without regard for whether the loans are backed by the government. Including all private loans for consideration under the CRA is consistent with the treatment of other types of loans under the CRA and is reflective of the importance of private loans in meeting the education needs of the community in furtherance of the CRA and HEOA.

III. Definition of "Low-Cost Education Loan" Should be Broadened

The Proposed Rule solicits comments regarding whether the proposed definition of "low-cost education loans" is appropriate. The Proposed Rule defines "low-cost education loans" as:

> "(1) Education loans originated by the bank through a loan program of the U.S. Department of Education; or (2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act...*with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.*" (emphasis added)

For the reasons described below, we believe that the second prong of the proposed definition, as drafted, is too narrow to encompass education loans originated by private lenders that are made independent of government programs. Consequently, the definition of "low-cost education loan" should be broadened to ensure that such loans can be considered for CRA purposes.

Loans originated by or through the Department of Education ("ED") are subsidized by the federal government and therefore are not priced in the same manner as loans made in the marketplace. Private education loans are not backed by a governmental entity and therefore involve the lender assuming all risks associated with the loan, including the risk of default and interest rate risk. Thus, unlike loans offered through a government program, private education loans are credit-based and priced according to risk and take into consideration fluctuations in interest rates. This pricing structure does not typically generate loans that have "interest and fees no greater than those of comparable" ED loans. Moreover, it is unclear under the Proposed Rule how banks would determine or document comparability with ED loans.

Accordingly, we advocate a definition of "low-cost education loan" that is more broadly drawn to ensure that private loans to LMI borrowers are includable under the rule for CRA purposes.

IV. Definition of "Low-Income Borrower" Should be More Precisely Tailored

The Proposed Rule solicits comments on the definition of "low-income borrower," which it defines in the same manner as that term is defined under the CRA. Further, the Proposed Rule applies this definition equally to ED loans and private education loans. However, equal application of the definition of low-income borrower to these two types of loans is not reflective of the way the two types of loans are originated and, accordingly, will result in disparate and undesirable results.

Specifically, the preamble to the Proposed Rule states that, under existing CRA guidance, if an institution considers the income of more than one person in connection with the education loan, the gross annual income of all associated persons should be combined to determine if the borrowers are "low-income." Income is frequently a factor in determining eligibility for private education loans and many private education loans involve cosigners. However, a borrower's income is not a factor in obtaining an ED loan and only in the case where a parent borrower obtains an endorser is another person ever "associated" with the loan. In light of the fact that income is not typically a factor for ED loans, applying these income standards could result in a large number of ED loans being includable under the CRA although the borrowers may not in reality be LMI borrowers. Thus, we believe that the differences between the use of income in determining eligibility for the different loan programs, as well as the disparity in multiple borrowers associated with an education loan under the different programs, should preclude treating the borrowers the same for purposes of this definition.

Further, we advocate that the final rule be expanded to cover both low-income and moderate-income borrowers. Although the HEOA only addresses low-income borrowers, we believe that including both low- and moderate-income borrowers would advance the objectives of the CRA and would be reflective of the approach taken by the Agencies in evaluating a bank's CRA performance in meeting the needs of the community by lending to both low and moderate income borrowers.

Accordingly, we recommend that the term "low-income borrower" in the final rule be more precisely drawn to ensure that application of the definition to ED and private loan programs covers only suitable borrowers, and that both low and moderate income borrowers are appropriately includable under the CRA.

V. Definition of "Education Loan" Should Include Loans for Elementary, Secondary and Higher Education and Tutorial Programs

The Proposed Rule solicits comments on whether the definition of "education loan" should be extended to include loans for elementary or secondary education. We believe not only that loans made for elementary and secondary education should be covered within the definition of education loans, but also that tutorial loans should be included within that definition as well.

Elementary, secondary and tutorial education loans are important in meeting the needs of families who cannot afford education expenses at the point in time that tuition is due, but who can afford to pay these expenses over time. Often times, students are admitted to various types of programs to continue or enhance their education and these programs can offer better opportunities to such students. This, in turn, advances the needs of the students' respective communities by providing members with access to higher quality, more specialized and more individually-tailored educations. Accordingly, elementary, secondary and tutorial loans promote the objectives of the CRA by meeting the education financing needs of the community at all levels of education and should be included within the definition of education loans.

VI. Definition of "Education Loan" Should Include Both Accredited and Unaccredited Institutions at All Levels of Education

Likewise, the Proposed Rule solicits comments on the types of educational institutions that should be covered by the definition of "education loan." Sallie Mae Bank recommends that the final rule include both accredited and unaccredited higher education institutions in a manner consistent with the Truth in Lending Act. Furthermore, we believe that the final rule also should cover both accredited and unaccredited elementary, secondary and tutorial institutions.

The availability of CRA credit for loans to students attending both accredited and unaccredited institutions provides banks with incentive to make a range of education loans, which, in turn, provides students with maximum flexibility in making decisions about their futures. A student's decision about which institution to attend involves a number of factors making the decision both complex and very personal. Such factors include whether the institution is tailored to the individual's needs, offers the best learning environment for the student, provides the proper amount of support and resources, involves the subject areas about which the student would like to pursue, and so on. Moreover, accreditation is dynamic, not static – institutions can attain or lose accreditation at any time. Banks should not be expected to monitor accreditation status of schools attended by their borrowers. In addition, accreditation may not be available to all types of educational institutions (for example, certain tutorial and vocational programs might not be subject to accreditation).

In sum, allowing banks to earn CRA credit for loans to attend accredited and unaccredited institutions at all levels of education provides students with the flexibility they need to make complex and personal decisions about their futures, and promotes the objectives of the CRA and HEOA. Therefore, accredited and unaccredited institutions at all levels of education should be included within the definition of "education loans."

VII. Final Rule Should Cover Both Originated and Purchased Loans

The Proposed Rule specifically requests comment on whether the proposal to limit education loans to those originated by the institution, rather than purchased by the lender, is appropriate. Sallie Mae Bank believes that the final rule should include both originated and purchased loans.

Under the CRA and its implementing rules, a bank may earn CRA credit for mortgage and other loans without distinction between whether the bank originated or purchased the loans. We see

no reason to treat the universe of student loans differently by allowing banks to earn CRA credit for student loans the bank originated, but not those that it purchased. Purchasing student loans provides an important function in the student lending industry by providing a market through which lenders can access funding by selling the loans they originated. The banks that purchase these loans are, thereby, providing an important funding source that enables sellers to originate more loans. Allowing sellers to originate more student loans by providing them with this market liquidity is crucial to furthering the education credit needs of the community in accordance with sound financial practices. Accordingly, the final rule should allow for CRA credit for originated, as well as purchased loans.

VIII. Final Rule Should Cover Closed-End, Open-End, Secured and Unsecured Loans

The Proposed Rule solicits comments regarding whether the term "private education loan" should include open-end and unsecured loans. Sallie Mae Bank believes that the final rule should include, for consideration under the CRA purposes, loans that are closed-end, open-end, secured and unsecured for the following reasons. First, under the CRA and its implementing regulations, banks may earn CRA credit for closed-end loan products (such as certain types of mortgage loans), open-end loan products (such as home equity loans), secured loan products (such as motor vehicle loans) and unsecured loan products (such as credit cards). We see no reason to segment the universe of student loans and allow CRA credit for only certain of those types of loan products, but not others. Moreover, the Proposed Rule does not provide a rational for making such distinctions.

Second, LMI borrowers have varying economic situations and different financial needs. In order to meet borrowers' needs and to remain competitive in the marketplace, banks should be encouraged to offer a variety of educational loan products. Accordingly, we believe that the final rule should allow for CRA credit for closed-end, open-end, secured and unsecured educational loan products in order to provide banks with the flexibility they need to remain competitive in the marketplace while meeting the credit needs of their local communities in accordance with sound financial practices in furtherance of the objectives of the CRA and HEOA.

IX. Final Rule Should Not Restrict Approved CRA Strategic Plans

Finally, Sallie Mae Bank believes that the final rule should not restrict CRA strategic plans that banks may have in place or wish to establish in the future. A CRA strategic plan is individually tailored to a bank and is designed to leverage the bank's strengths, available resources and abilities in order to meet the distinct financial needs of the communities in which the bank serves. In addition, CRA strategic plans are developed in consultation with and approved by the bank's federal functional regulator. Accordingly, the final rule should not limit existing or future CRA strategic plans.

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Thank you for the opportunity to comment on the Proposed Rule. If you have any questions or wish to discuss these requests and comments, please do not hesitate to contact me.

Respectfully submitted,

Denise Hughett
CRA Officer
Sallie Mae Bank