

June 2, 2009

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson
Director
Division of Supervision and
Consumer Protection

Michael Bradfield
General Counsel

SUBJECT: Joint Notice of Proposed Rulemaking: Amendment to the
Community Reinvestment Act Regulation

RECOMMENDATION

We recommend the Board approve and authorize for publication in the *Federal Register* the attached joint notice of proposed rulemaking (NPR) revising the regulations implementing the Community Reinvestment Act (CRA). With your approval, the FDIC will issue this proposal jointly with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the Agencies).

The proposed rule would make two unrelated changes to the CRA regulations. The first would be to revise the regulation to reflect the recent statutory change to the CRA made by the Higher Education Opportunity Act (HEOA), which requires the Agencies to consider, as a factor in CRA evaluations, low-cost education loans provided by an institution to low-income borrowers. The second change is to add a new paragraph to address an existing statutory provision permitting the Agencies to consider, as a factor in the CRA evaluation of a non-minority and non-women owned financial institution, activities undertaken by the institution in cooperation with minority-and women-owned financial institutions and low-income credit unions.

DISCUSSION

Background

The CRA requires the federal banking and thrift regulatory agencies to assess the record of each insured depository institution in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and to take that record into account when the agency evaluates an application by the institution for a deposit facility.

Section 1031 of the HEOA revised the CRA to require the Agencies to consider, in evaluating an institution, low-cost education loans provided by the institution to low-

income borrowers. (12 U.S.C. 2903(d)) Section 1031 further required the Agencies to issue regulations regarding the provision not later than one year after enactment, which was August 14, 2008.

Under the existing CRA regulations, education loans are not specifically addressed, but would be evaluated as consumer loans. Consumer loans are defined generally in the CRA regulations as loans for personal, family, or household purposes other than purchase-money mortgages.

As a general rule, consumer loans are not reviewed as part of the CRA evaluation of an institution unless they represent a substantial majority of the institution's business. An institution may request consumer loans be considered, but if so, must collect and maintain data about its consumer lending. The proposed rule would provide an incentive for banks to offer low-cost student loans to low-income individuals.

Regarding the second recommended change, the CRA also permits the Agencies to consider as a factor, when they assess the community reinvestment record of a nonminority- or nonwomen-owned financial institution's capital investments, loan participations and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions. The Agencies have made clear through the *Interagency Questions and Answers Regarding CRA* that they give positive consideration for such activities. The Agencies are taking this opportunity to update the regulation to address this statutory provision.

Proposed Rule

The proposal defines "low-cost education loans" to mean education loans provided through programs of the U.S. Department of Education or any private education loan as defined in the Truth in Lending Act, as amended by the HEOA, including loans under a state or local education loan program carrying interest rates and fees no greater than those under comparable Department of Education programs. The proposal defines "low-income" consistent with the current definition in the CRA regulation to mean an individual income less than 50 percent of the area median income.

The proposal limits consideration of education loans to post-secondary education, including accredited colleges and vocational schools. The proposal does not cover unaccredited institutions but asks for comment regarding loans to students attending such institutions.

The proposed rulemaking also asks for comment on a number of issues regarding the scope of "education loan," including whether the Agencies should only consider loans for post-secondary education or, since the statutory language does not define "education loan," whether the agencies should interpret the statute broadly and also consider low-cost loans for elementary or secondary education. The proposal also requests comment on the definitions of "low-cost" loans and "low-income borrower."

As noted previously, the proposal also would update the regulation to address joint ventures between majority and non-women owned institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions. The proposed rule will include the current guidance found in the *Interagency Questions and Answers* that such activities need not benefit the assessment area(s) of the nonminority- and nonwomen-owned institution.

Comment Period

The HEOA requires that final regulations for the provision regarding low-cost education loans to low-income borrowers be adopted a year from enactment. Staff recommends a comment period of 30 days for the publication of the interagency rule in the *Federal Register*.

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Attachments