

July 30, 2009

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD45

Re: Community Reinvestment Act Regulations; Joint Notice of Proposed Rulemaking

Dear Mr. Feldman:

Branch Banking and Trust (BB&T) Corporation appreciates the opportunity to comment on the joint notice of proposed rulemaking (Proposal) under the Community Reinvestment Act (CRA).

BB&T, headquartered in Winston-Salem, North Carolina, operates more than 1,500 financial centers in the Carolinas, Virginia, Maryland, West Virginia, Kentucky, Tennessee, Georgia, Florida, Alabama, Indiana and Washington, D.C. With \$152.4 billion in assets, BB&T is the nation's 10th largest financial holding company (June 30).

BB&T and its subsidiaries offer full-service commercial and retail banking and additional financial services such as insurance, investments, retail brokerage, mortgage, corporate finance, consumer finance, payment services, international banking, leasing and trust. More information about BB&T Corporation is available at www.BBT.com.

The federal bank and thrift regulatory agencies (the Agencies) have proposed revisions to regulations implementing the CRA to include consideration of low-cost education loans provided to low-income borrowers when assessing a financial institution's record of meeting community credit needs. The Proposal implements provisions of the recently enacted Higher Education Opportunity Act (HEOA), which revised the CRA.

The Proposal also incorporates into the CRA rules statutory language that allows the agencies, when assessing an institution's record, to consider, as a factor, capital investments, loan participations, and other ventures by nonminority- and nonwomen-owned financial institutions in cooperation with minority- and women-owned institutions and low-income credit unions. This language codifies guidance in the *Interagency Questions and Answers on Community Reinvestment*, published on January 6, 2009.

Our comments are limited to the amendments mandated by the HEOA.

General

Under the existing CRA regulations, education loans are included in CRA evaluations, at the behest of the institution, as part of a consumer loan category. Consumer lending must be included in the evaluation only if it makes up a substantial majority of the institution's business. Otherwise, the institution may choose to have it evaluated, essentially on a product-by-product basis.

Section 1031 of the Higher Education Opportunity Act (HEOA) has now amended the CRA to require the Agencies to consider, as an evaluation factor, "low-cost education loans provided by the institution to low-income borrowers." The Proposal would implement this change.

A number of issues are raised by the Proposal, including several for which the Agencies have specifically asked for comment. We believe it is helpful, in responding to these questions, to establish some general principles.

It is clear that the intent of the statutory amendment is to encourage affordable education loans to lower income consumers by using the vehicle of CRA. We support that objective. As regulations are drafted to implement the new provision, however, we encourage the Agencies to bear in mind that CRA is not a compliance statute. It is a means of encouraging banks to help meet the credit needs of their communities, subject to safe and sound lending. Therefore, unnecessarily detailed technical requirements should be kept to a minimum, and flexibility and innovation should be encouraged. In short, as the Agencies draft the regulations, they should do so in a manner that will best encourage low-cost lending to lower income persons to help meet their education needs, while not placing restrictive, technical requirements on institutions that will only interfere with that objective.

With these principles in mind, BB&T supports the Proposal, subject to our comments in three areas: a) the manner in which the Agencies propose to evaluate low-cost education loans to low-income borrowers; b) the proposed manner of defining "low-cost" education loans; and c) the proposed manner of defining "low-income" borrowers. Our specific comments follow.

CRA Evaluation

Low-cost education loans to low-income borrowers should be viewed as responsive to the credit needs of the institution's community, by definition, and should receive favorable qualitative consideration. We believe this is what the Proposal intends, but we encourage the agencies to make the manner of consideration more clearly in the final regulation. The preamble to the proposal states: "As proposed, institutions would receive favorable *qualitative* consideration for originating "low-cost education loans to low-income borrowers" as a factor in the institutions' overall CRA rating. Such loans would be considered responsive to the credit needs of the institutions' communities," 74 FR 31214 (June 30, 2009) (Emphasis added.) We believe this is appropriate, and calls for consideration that is similar to the treatment of community development activities.

The Agencies have requested comment on consideration of the applicable loans as a subcategory of consumer loans. Under this alternative, the institutions would have the option of receiving a separate quantitative evaluation of the number and amount of low-cost education loans to low-income borrowers, without regard to other consumer loans. While this would have the advantage of being consistent with other consumer lending product lines, and would also be optional, we believe that it would be less desirable than the proposed treatment. The Lending Test—of which the consumer lending evaluation is a part—relies on data to determine the distribution and penetration of lending to low-, moderate-, middle-, and upper-income borrowers and the relative percentages compared with the population demographic. Loans are evaluated by number and amount; borrower characteristics (i.e. distribution among borrowers of different income levels); geographic distribution (i.e. distribution among borrower in geographies with different income levels and whether loans are made to borrower in the institution's assessment area); and, for large retail institutions, whether the education loan program is innovative or flexible in addressing the needs of low- or moderate-income individuals or geographies. Therefore, if this were to become a subcategory of consumer lending, the banks would have to generate the necessary data, to the extent it does not already exist. And it would be difficult to evaluate the data in the absence of data from other institutions. If this were the approach taken, it would not be universally employed due to the nature of the Lending Test, and would perhaps be a disincentive for participation. However, as noted by the Agencies, all education loans would continue to be eligible for consideration as consumer loans, at an institution's option, under existing CRA rules.

It is most critical that, whatever form of assessment is adopted, it should not create an explicit or implicit mandate to make these loans or report the loans that are made. Education funding is a specialized product, one in which many banks do not engage. The spirit of the CRA is to meet the communities' credit needs within the guidelines of safety and soundness. A mandate of participation that may push institutions outside of an established business model will increase the cost of doing business. An additional compliance cost will only exacerbate matters. The result may unintentionally push the industry away from Congress' goal of banks making student loans – no matter the borrower income.

Thus, we recommend that the regulation clearly state that low-cost education loans to low-income borrowers are responsive to the needs of the institutions' communities; and that the Agencies will give them favorable qualitative consideration at the option of the institution. It is not a required element of the CRA assessment; and the absence of these loans would not be viewed negatively under a CRA assessment.

Definition of Low-Cost Loans

Prior to HEOA, nothing in CRA mandates that loans be "low cost." The affordability of the products that qualify for CRA consideration is largely a function of the need to make credit available to low- and moderate-income sectors of the community. Of course, loans that are discriminatory or that violate other consumer protection laws will have a negative effect on a CRA evaluation, but in other respects, the evaluating Agencies do not look at

the pricing of the mortgage loans or consumer loans that are given consideration. As a result, the need to determine whether an education loan is “low-cost” is a case of first impression under CRA.

As proposed, low-cost education loans would be defined to mean (1) education loans originated by an institution through a U.S. Department of Education loan program or (2) any private education loan as defined in the Truth in Lending Act, including loans under a state or local education loan program, originated by an institution of higher education with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education. The Agencies are seeking comment on the appropriate definition of low-cost loans.

We believe that the definition of a low-cost private education loan should not be based on a comparison with the rates and fees in the federal student loan program, because the federal loan programs and private loans are not comparable in a number of important ways. For example, education loans made through the federal loan program have a 97% guarantee against default. Lenders that make private loans, on the other hand, take 100% of the risk of default in making a loan to a particular borrower. Additionally, in the federal student loan program, the lender’s yield is not tied to the interest rate paid by the borrowers. Rather, lender return is based on a separate formula set in statute.

Banks making private education loans must consider market interest rate fluctuations as well as a borrower’s credit risk when making a private loan credit decision. Therefore, in many cases, the private education loan interest rates offered cannot compete with the federal loan program, since the Treasury directly funds the latter.

Due to the variable rate nature of private education loans, we recommend that the Agencies set the formula based on an index plus a margin to allow financial institutions to adjust to interest rate fluctuations in the market and to engage in safe and sound lending practices. We recommend reliance upon the “fully indexed rate” of the loan in order to prevent a loan with an artificially low initial rate from treating it as a “low-cost” loan” for these purposes.

Definition of Low Income Consumers

We support the proposal that the definition of low-income remain consistent with the manner of determining income under CRA. Thus, the lender should consider the income included in the credit decision: the borrower’s income, or the combined incomes in the case of loans that are co-signed. The calculus should also be consistent with CRA, such that “low-income” is less than 50% of the area median income.

We do recommend that government loans that are needs-based, such as subsidized Stafford Loans, automatically qualify as loans to low-income borrowers. In regard to other government loans, at least for the remaining time that institutions continue to be allowed to offer them, we recommend that a method be developed to allow institutions to

determine whether they qualify under an income test. Institutions do not obtain income information for government education loans.

One final point: By its terms, CRA is concerned with “low- and moderate-income” (LMI) consumers. The Section 804 of CRA states:

- (a) In general. In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall—
 - (1) assess the institution's record of meeting the credit needs of its entire community, including *low- and moderate-income* neighborhoods, consistent with the safe and sound operation of such institution; and
 - (2) take such record into account in its evaluation of an application for a deposit facility by such institution. (Emphasis added)

The statutory amendment limits consideration to education loans that are made to “low-income borrowers.” Since LMI is a clearly understood and well-defined term in CRA and “low-income borrowers” is not, we believe it would be preferable for CRA to remain consistent in consideration of loans LMI consumers. Therefore, we would encourage the Agencies to use the flexibility accorded them in their rule writing to expand the consideration to include low-cost education loans to LMI borrowers.

Conclusion

BB&T appreciates the opportunity to comment on the joint notice of proposed rulemaking (Proposal) under the Community Reinvestment Act (CRA).

We realize that as our nation’s needs evolve, the statutory provisions affecting the vehicle of CRA will be amended. Therefore, we understand that it is imperative and prudent to draft regulations that accurately reflect our communities’ progress, while encouraging banks to continue to meet credit needs within the guidelines of safety and soundness. We commend the agencies for their efforts.

Should you have any questions regarding the comments made, please contact me at 336-733-3150 or Suzanne Sigmon, CRA Compliance Manager, at 704 954-1412.

Sincerely yours,



Sharon Jeffries-Jones