

August 30, 2010

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

***Re: Community Reinvestment Act Regulation Hearings and Request for Comment,
RIN number 3064-AD60***

Dear Mr. Feldman:

This letter is submitted by Sallie Mae Bank in response to the hearing notice and request for comment published 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”) on June 23, 2010 regarding the Community Reinvestment Act (“CRA”) regulations (the “Notice”).¹ We appreciate the opportunity to provide comments on the CRA regulations and commend the Agencies’ efforts to revise the regulations to better serve the goals of the CRA.

Sallie Mae Bank (the “Bank”) is an 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 is one of the U.S. government’s primary servicers of federal student loans, managing or servicing approximately 25% of the total outstanding federal loans. In addition, Sallie Mae provides private student loans for both undergraduate and graduate students and their parents, as well as loans for elementary and secondary education and tutorial programs.² The 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. To that end, the Bank satisfies its CRA obligations pursuant to the strategic plan it established in 2006, the most recent version of which was

¹ 75 Fed. Reg. 35686 (June 23, 2010).

² Sallie Mae also offers comprehensive information and resources to assist students, parents and guidance professionals with the financial aid process. Sallie Mae’s saving programs, planning resources and financing options have helped more than 31 million people make the investment in higher education. Through its subsidiaries, the company manages \$184 billion in education loans and serves 10 million student and parent customers. In addition, the company’s Upromise program has enabled 12 million members to earn more than \$550 million in rewards to help pay for college. Its Upromise affiliates also manage more than \$26 billion in 529 college-savings plans.

approved by the FDIC on June 9, 2009. Because both the Bank's and its parent's business is primarily to fund, deliver, and service education loans for students and their parents, its CRA strategic plan largely relies on education loans and includes, among other things, educational lending, scholarships and finance-related education services.

I. Introduction

The Agencies have solicited comments on whether and how the Agencies should revise the CRA regulations to better serve the goals of the CRA, which are to encourage insured depository institutions to help meet the credit needs of their communities, including low- and moderate-income ("LMI") neighborhoods, in a manner that is consistent with safe and sound operations.

To better enable banks to address the needs of communities, the Bank believes that the Agencies should revise the CRA regulations to ensure that CRA requirements reflect the ways in which the financial services industry has developed, including the industry's widespread use of technology. Since the CRA is not a compliance statute, and is instead a means of encouraging banks to help meet the credit needs of their communities subject to safe and sound lending, the Bank believes that unnecessarily detailed technical requirements should be kept to a minimum and flexibility and innovation should be encouraged. Therefore, we recommend that future revisions to the CRA regulations be designed in a manner that best encourages community development lending and other activities, while not imposing restrictive technical requirements on banks that would impede that objective.

To that end and as discussed in detail in this letter, the Bank advocates for modifications to the CRA regulations that are designed to (1) expand the geographic approach currently taken by the regulations to enable banks to earn credit for community development across jurisdictions; (2) continue to allow banks to request that affiliate activities be considered in their CRA examinations; (3) encompass all types of private education loans, as education loans are essential to community development; and (4) allow for banks to continue to develop and maintain strategic plans to satisfy their CRA obligations.

II. Geography

Currently, the CRA regulations require institutions to identify one or more the assessment area(s) upon which their CRA efforts will be evaluated. Generally speaking, areas that institutions typically identify include the location(s) (i.e., town, municipality, county, other political subdivision, or the metropolitan statistical areas ("MSA")) in which an institution's branches are located and a substantial portion of its loans are made. However, institutions may select alternative assessment areas so long as certain conditions are satisfied. Identification of an institution's assessment area may be appropriate for a bank with an established customer-facing presence (e.g., "brick and mortar" banks that operate branch and other locations at which customers may receive products and services in-person). However, the CRA regulations in place today do not adequately reflect the continued reliance upon internet banking by banks and customers alike.

For example, the Bank originates the vast majority of its private student loans – approximately 99% – through an online application process.³ During the origination process, borrowers may receive customer service by calling representatives at the Bank’s call centers. But, the Bank does not operate physical locations at which customers may receive bank products and services in-person, or at which the Bank could gain new customers through neighborhood “foot traffic.” Instead, the Bank’s efforts to reach its existing customers and expand its customer base are centered around online customer interaction and through Sallie Mae’s extensive network of product marketing at educational institutions throughout the country.

Moreover, the Bank is just one example of a bank that delivers its products and services primarily online. A large and growing number of institutions rely on the internet as their chief method of product and service delivery. These institutions range from banks with large nationwide operations that use the internet to provide greater and more convenient service to customers, to institutions that offer products tailored to niche markets that rely on the internet to reach these markets and achieve the scale and efficiencies needed to remain competitive. In addition, many “brick and mortar” banks continue to expand their online functionality and customers continue to increase their reliance upon the internet to access financial products and services. Increased reliance on the internet by banks and customers alike, and unique nationwide product markets of certain institutions, like the Bank, mean that a bank’s “community” is very often much larger (even nationwide) than the MSA where its head office is located. In such cases, a bank’s assessment area should take this larger, broader community into account.

Thus, the Bank recommends that future amendments to the CRA reflect the industry’s increased reliance on the internet as a way of providing loans and other financial services to consumers by providing an alternative method of apportioning credit for all loans that an institution may make, as well as all other community development activities regardless of assessment area or physical location of the bank.⁴ The Bank further recommends that future amendments to CRA regulations recognize that many institutions operate on a nationwide basis and that they should be afforded the flexibility to focus their CRA efforts accordingly without having to be evaluated solely for CRA activities in a particular assessment area.

III. Affiliate Activities

The Bank appreciates the flexibility afforded by the current CRA regulations, which allow depository institutions to request that affiliate activities be considered in the institution’s CRA evaluation. The Bank routinely requests that the activities of its affiliates be considered in the course of its CRA evaluation because a number of its affiliates engage in activities and hold loans that are community development focused.

Furthermore, allowing banks to request inclusion of affiliate activities in their CRA evaluation (as opposed to requiring consideration of the activities of affiliates) is in line with the nature of

³ The remainder of loans originated by the Bank are originated through alternative methods such as U.S. mail or telephone.

⁴ We understand that the statutory language of the CRA makes reference to banks serving local communities. *See, e.g.*, 12 U.S.C. 2901. To be clear, we are not proposing that future regulations disregard this statutory mandate. Instead, we are suggesting that future regulations allow for institutions to receive equal recognition for all LMI customers they serve, in addition to CRA activities within their local communities.

the CRA regulations (to encourage banks to engage in community development activities). This provides banks with the flexibility to structure their operations in a manner that best suits their business. On the other hand, mandating a review of affiliate activities could be too restrictive for some banks, especially where such banks satisfy their CRA obligations independently.

Thus, the Bank recommends that future CRA regulations continue to allow banks to elect to have affiliate activities including in their CRA evaluations.

IV. Education Loans

As noted above, the CRA is designed to help meet the credit needs of all segments of a community, including but not limited to LMI neighborhoods. Education loans satisfy a very specific and significant credit need of communities by enabling borrowers to finance education. Education is critical to both individual advancement and to community development. Accordingly, all types of education lending should be eligible for CRA credit, including private education loans; loans to finance all levels of education (elementary, secondary and higher education and tutorial programs); loans to finance education at both accredited and unaccredited institutions; loans regardless of whether they were originated or purchased by the institution; and open-end, closed-end, secured and unsecured education loans, as discussed below.

a. Private Education Loans

Notably, private education loans, in particular, are of critical importance to satisfying the educational credit needs of communities and should be includable in an institution's CRA lending activities. Specifically, many students and parents are not able to finance education costs *solely* through federal, state or local loan programs. Therefore, private loans offer an important – and often essential – additional source of funding that enables borrowers to fully finance education costs. 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.⁵

Further, by design, the purpose of *all* private education lending is to assist borrowers (e.g., parents, other family members, students and others) in financing education costs. Thus, the purpose of all private education lending 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

⁵ Allowing private education loans to be eligible for CRA credit is consistent with treatment of other types of loans under current CRA regulations. Specifically, 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 distinguishing between governmentally-backed education loans and private non-guaranteed education loans. This position is supported by the fact that governmentally-backed education loans and non-governmentally-backed education 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, Electronic Funds Transfer Act (Regulation E), Equal Credit Opportunity Act (Regulation B), the USA PATRIOT Act, the Bank Secrecy Act, the Telephone Consumer Protection Act, and the Telemarketing Sales Rule just to name a few.

financial practices, and the objective of the Higher Education Opportunity Act (“HEOA”),⁶ which is to provide incentives under the CRA to financial institutions for making low-cost education loans to low-income borrowers. Specifically, Section 1031 of the HEOA revised the CRA to require the Agencies to consider the low-cost education loans that a depository institution makes to low income borrowers when evaluating whether a depository institution meets the credit needs of the communities it serves.⁷

Accordingly, consistent with the tenets of the CRA and HEOA, the Bank recommends that all education loans, including private education loans be eligible for assessment in an institution’s CRA evaluation.

b. Loans for Elementary, Secondary and Higher Education and Tutorial Programs

Loans to finance education at all levels (elementary, secondary and higher education, as well as tutorial programs) should be eligible for CRA credit. Education at each level is consistent with the CRA’s and HEOA’s objective of advancing a community by providing credit to individuals within that community.

All loans to finance education 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 those expenses over time. Students are admitted to various types of educational programs at all stages of their academic lives and beyond, and such education can both enhance their academic experiences and offer better opportunities. This, in turn, advances the needs of the students’ respective communities by providing them with access to higher quality, more specialized and more individually-tailored educational opportunities, which can occur from elementary school through higher education. Likewise, tutorial programs enhance a student’s education by exposing the student to additional learning tools and materials with the objective of enabling the student to do better in his or her respective educational program.

Accordingly, loans to finance elementary, secondary and higher education, and tutorial programs promote the objectives of the CRA by meeting the education financing needs of the community in a manner that is consistent with the CRA and HEOA and therefore such loans should be eligible for credit under future CRA regulations.

c. Loans to Attend Accredited and Unaccredited Institutions

The Bank recommends that future revisions to the CRA rule allow institutions to earn CRA credit for loans they may extend to finance education at both accredited and unaccredited education institutions. Making CRA credit available for loans to students attending both accredited and unaccredited institutions would provide banks with incentive to make a range of education loans, which, in turn, would provide 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

⁶ Public Law 110–315, 122 Stat. 3078 (August 14, 2008).

⁷ See 12 U.S.C. 2903(d).

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, banks should be able to earn CRA credit to making loans that finance education at both accredited and unaccredited institutions.

d. Originated and Purchased Loans

The Bank believes that future revisions to the CRA regulations should allow banks to earn CRA credit for all education loans whether originated or purchased by the bank. 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. Similar to the secondary market for mortgages, 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, future revisions to the CRA regulations should allow banks to earn credit for both originated and purchased education loans.

e. Closed-End, Open-End, Secured and Unsecured Education Loans

The Bank believes that future modifications of CRA regulations 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.

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 future revisions to the CRA regulations 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.

V. Regulatory Incentives

In the Notice, the Agencies specifically solicited comments on whether there is an opportunity to improve the rules governing CRA ratings to differentiate strong, mediocre, and inadequate CRA performance more consistently and effectively. As an institution that invests in and takes seriously its CRA obligations, the Bank supports additional incentives for strong CRA performance. The Bank recommends that such incentives take the form of a reduction to an institution's deposit insurance rate and in the additional time between a bank's scheduled CRA examinations.

VI. Broadening the Scope of the CRA Rules

Currently, in order to qualify for CRA credit, volunteer programs must include a financial literacy element. But there is a range of opportunities through which depository institutions may benefit their communities through volunteer efforts. For example, there are a number of volunteer programs that aim to improve the homes of or build homes for LMI persons. There is also a vast array of opportunities to develop and benefit communities through other educational channels, including tutorial and mentoring programs that do not directly involve financial literacy, but which are enormously beneficial to students and their respective communities. Thus, the Bank believes that revisions to the CRA regulations should allow institutions to earn credits for a broader range of volunteer efforts.

In addition, the Bank believes that future revisions to CRA rules should allow institutions to earn credit for any product that they offer to LMI customers as part of their CRA outreach programs. These recommended extensions of the CRA rules would continue to encourage banks to invest in and work to develop and benefit their communities, and could further integrate financial institutions into the communities in which they serve.

VII. Impact of Evidence of Discriminatory or Other Illegal Credit Practices

As mentioned in the Notice, the Agencies' current CRA performance evaluations are adversely affected by evidence of discriminatory or other illegal credit practices or violations of other applicable laws unrelated to the CRA. In the Notice, the Agencies solicited comments on whether the existing standards are adequate in this regard. Currently, the CRA rules provide that:

(c) Effect of evidence of discriminatory or other illegal credit practices. (1) The [Agencies'] evaluation of a [depository institution's] CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the [depository institution] or in any assessment area by any affiliate whose loans have been considered as part of the [depository institution's] lending performance. In connection with any type of lending activity described in [the section of the CRA rules that outlines the lending test], evidence of

discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

- (i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;
- (ii) Violations of the Home Ownership and Equity Protection Act;
- (iii) Violations of section 5 of the Federal Trade Commission Act;
- (iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and
- (v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the [depository institution's] assigned rating, the [Agencies] consider the nature, extent, and strength of the evidence of the practices; the policies and procedures that the [depository institution] (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the [depository institution] (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.⁸

While the Bank understands and respects the need for the Agencies to evaluate CRA programs in light of illegal practices in which an institution may be engaged, the Bank believes that the rules, as currently drafted, are not sufficiently precise to guide depository institutions as to the specific interrelation between certain violations and CRA-ratings. In particular, the rule appears to give the Agencies very wide latitude – perhaps too wide – to downgrade a CRA rating for matters not presented during the CRA examination.

For example, the rules allow an institution's CRA rating to be "adversely affected" if there is "evidence" of discriminatory or other illegal credit practices. That is, the CRA rules do not require an actual violation to have occurred; instead "evidence" of discriminatory or illegal conduct would be sufficient to downgrade a CRA rating without an actual violation being proven. Also, the rule does not provide guidance as to what might constitute such "evidence" or the amount of evidence that would be needed in order to result in an institution's CRA rating being "adversely affected."

Further, while the rules state that the Agencies will consider a number of factors in determining the effect of the evidence (such as the "nature, extent and strength" of such evidence; the institution's policies and procedures to prevent the practices; corrective action; and any other relevant information), it does not provide guidance as to how extensive a violation would need to

⁸ See the CRA rules promulgated by (a) the Office of the Comptroller of the Currency: 12 C.F.R. § 25.28(c); (b) the Board of Governors of the Federal Reserve System: 12 C.F.R. § 228.28; (c) the Federal Deposit Insurance Corporation: 12 C.F.R. § 345.28(c); and (d) the Office of Thrift Supervision: 12 C.F.R. § 563e.28(c).

be to result in a downgrade. That is, the rules do not require that the “adverse affect” to an institution’s CRA rating be proportional to the violation or that it be proportional the population of a depository institution’s customers that were impacted by the violation. Thus, under today’s CRA rules, an institution’s rating could be downgraded (and possibly significantly downgraded) for practices that impact only a very limited segment of an institution’s lending population even where the institution presently has a strong CRA program and a demonstrated history of CRA performance that does not involve discriminatory or otherwise illegal practices.

Depository institutions need to have a clear expectation and understanding of the way in which their CRA ratings may be impacted by certain violations or regulatory deficiencies. Furthermore, downgrades of CRA ratings should be proportional to the violation and the size of the population of a depository institution’s customers that may be affected by the violation. Accordingly, the Bank proposes that future revisions to the CRA rules include clear and specific standards that outline each violation or deficiency that could impact an institution’s CRA ratings, along with the corresponding consequence in which such a violation or deficiency would result. These proposed standards would go a long way towards setting industry expectations with respect to the interrelation of specific regulatory obligations and CRA ratings.

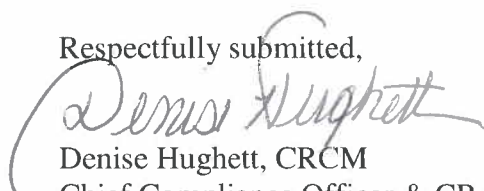
VIII. Strategic Plans

As noted above, the Bank has been operating under a strategic CRA plan since 2006. The Bank’s strategic plan is carefully tailored to the its operations and lines of business, as are the strategic plans of many banks, and affords us with the maximum flexibility in managing our community development activities. Generally speaking, CRA strategic plans are often individually tailored to a bank and are 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 Bank strongly advocates that future modifications to the CRA regulations should not restrict CRA strategic plans that banks may have in place or wish to establish in the future.

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

Respectfully submitted,



Denise Hughett, CRCM
Chief Compliance Officer & CRA Officer
Sallie Mae Bank