

**WELLS
FARGO**

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Via E-mail: regs.comments@federalreserve.gov; regs.comments@occ.treas.gov; Comments@FDIC.gov

July 30, 2009

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Docket No. OCC-2009-0010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1360

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

Regulations Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2009-0010

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

Dear Sir or Madam,

This Letter is written in response to the joint notice of proposed rulemaking ("Proposal") issued by the federal bank and thrift regulatory agencies (the "Agencies") under the Community Reinvestment Act ("CRA"). The Proposal implements provisions of the recently enacted Higher Education Opportunity Act (HEOA) which amends 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. Our comments will be limited to these provisions of the Proposal.

Wells Fargo & Company is a diversified financial services company with \$1.3 trillion in assets providing banking, consumer finance, mortgage, insurance, and investment services from more than 11,000 stores as well as through the Internet and other distribution channels across the United States. Wells Fargo has been providing financial solutions to help families and students pay for college for over 40 years in all of the communities we serve. As a result, we have a keen interest in the joint Proposal and very much appreciate the opportunity to comment on the Proposal.

Wells Fargo is a member of the Consumer Bankers Association ("CBA"). We have participated in the development of the comment letter that is being submitted by the CBA (the "CBA Letter"), reviewed the final CBA Letter, and concur with the positions set out in that letter.

In addition, we wish to highlight certain issues of particular significance to Wells Fargo:

1. CRA Evaluation

For the reasons stated in the CBA Letter, Wells Fargo requests that the final rule clearly state that low cost education loans to low-income borrowers are responsive to the credit needs of the institutions' communities and will receive favorable qualitative consideration at the option of the institution. We also specifically concur that the form of assessment adopted should not directly or indirectly require institutions to (i) make low cost education loans to low-income borrowers, or (ii) report such loans that are made. It is critical that the final rule specifically indicate that whether an institution originates such loans and seeks to have such loans considered in the institution's overall CRA rating is in each case at the option of the institution. We request that the final rule similarly indicate that the absence of such loans will not be viewed negatively under a CRA assessment.

Finally, at the same time we strongly support providing institutions the option to receive favorable qualitative consideration for originating such loans we also urge preservation of the ability to receive favorable quantitative consideration as consumer loans on the Lending Test under existing CRA rules.

2. Education Loans

Wells Fargo supports using the definition of "Private education loans" in section 140(a)(7) of the Truth in Lending Act for purpose of this rulemaking, and recommends that the final rule apply the same test¹ to determine whether any particular private education loan type is "low-cost". In order to effectively facilitate the important public policy objective of encouraging origination of "low-cost loans" to low-income borrowers, private education loans not made, insured or guaranteed under a Federal, state or local education program should be considered for CRA purposes. This is completely consistent with the ability under existing CRA rules to receive favorable quantitative consideration in an institution's overall CRA assessment for originating education loans of any type to low-to-moderate income borrowers, including private education loans not carrying any such insurance or guarantee. Moreover, the financial institutions that originate the vast majority of private education loans do not make such loans with any federal, state, or local insurance or guarantee. In order to encourage such institutions to continue and increase origination of low-cost loans to low-income borrowers, and to remain consistent with current CRA rules, the Agencies should affirm in the final rule that financial institutions can at their option receive favorable qualitative CRA consideration for making low-cost private education loans to low-income borrowers not covered by Federal, state or local insurance

¹ See our recommended test under "3. Definition of Low-Cost Loans".

3. Definition of Low-Cost Loans

We support and reinforce the CBA Letter in strongly urging that the final rule adopt an alternative approach to defining when a private education loan constitutes a low-cost education loan. As set forth in the CBA Letter, the material and significant differences between private education loans and federal student loans in the areas of default risk/insurance, underwriting, yield, market interest rate sensitivity, and product attributes (e.g., interest rate calculation methods) results in an apples to oranges comparison that effectively forecloses consideration of private education loans for CRA assessment purposes. For these reasons, and the detailed rationale contained in the CBA Letter, Wells Fargo specifically requests that "low cost loans" be defined under the second prong to include private education loans meeting an APR² threshold where the underlying (i) interest rate component is derived from a market-based formula reflective of the cost of funds, such as the use of the 3-month LIBOR plus a reasonable margin, and (ii) loan fee component is reasonable in light of industry norms. This formula provides a more reliable and appropriate benchmark for determining when a private education loan is "low-cost" and therefore suitable for optional favorable qualitative consideration in an institution's overall CRA assessment. Importantly, this alternative formula will promote, rather than discourage, origination of private low cost loans to low income borrowers.

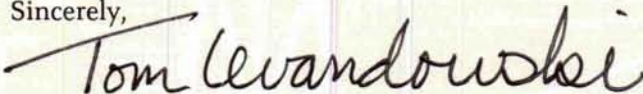
4. Definition of Low Income Consumers

Wells Fargo fully supports the Agencies' proposal to use the same "low-income" definition found in the existing CRA rule with respect to individuals. Specifically, we agree that the income of each borrower included in the credit decision should be considered to determine whether the borrower(s) are "low-income" and that the appropriate calculus is whether such income is less than 50% of the area median income.

For the reasons stated in the CBA Letter, we believe it would be preferable for the Agencies to use the flexibility accorded them in their rule writing to expand the consideration of low cost loans to include low-cost education loans to "low- and moderate-income" borrowers. Doing so is not only consistent with the general bedrock concern under the CRA for LMI borrowers but is also consistent with the fact that individuals/families with low and higher income levels are eligible for federal loans under applicable financial need criteria.

Wells Fargo very much appreciates the opportunity to provide comments in connection with the Proposal. We urge full consideration of the comments provided herein and in the CBA Letter and we will be happy to discuss the issues in more detail. Please contact the undersigned to discuss any concerns addressed or questions raised by this letter.

Sincerely,



Tom P. Levandowski
Senior Counsel, Wells Fargo Law Department
651-205-9643

² An APR threshold, by combining upfront fees and other costs of credit with a loan's interest costs over the life of the loan and expressing them as a yearly percentage, provides a clearer picture of the actual and total cost of a particular private education loan product, facilitating a more reliable and uniform determination of "low-cost" as applied to private loan products with different loan fees and different rate structures.