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October 8, 2010

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM: Thomas A. Barnes
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Examinations, Supervision, and Consumer Protection

SUBJECT: Community Reinvestment Act: Joint Final Rule Regarding Low-Cost Education Loans to Low-Income Borrowers and Support for Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions

The Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), and Office of the Comptroller of the Currency (OCC) (collectively, “the Agencies”) have published a final joint Community Reinvestment Act (CRA) rule that implements the statutory requirement that the Agencies consider, as a factor, low-cost education loans made by a financial institution to low-income borrowers when assessing an institution’s record of meeting community credit needs.¹ The final rule also incorporates a statutory provision that permits the Agencies to consider, as a factor, capital investment(s), loan participation(s), and other ventures that nonminority-owned and nonwomen-owned financial institutions undertake in cooperation with minority- and women-owned financial institutions and low-income credit unions when evaluating an institution’s CRA performance.²

Summary of the Low-Cost Education Loan Final Rule Provisions

Existing CRA regulations allow education loans to be evaluated as consumer loans.³ The revisions to the rule do not change this. Instead, they change the general performance rules in 12 CFR 563e.21 to implement the requirements of section 1031 of the HEOA. The Agencies will continue to consider education loans as consumer loans if an institution’s education loans do not qualify for CRA consideration under section 1031 of the HEOA and this implementing rule.

¹ Section 1031 of the Higher Education Opportunity Act, Pub. Law 110-315, 122 Stat. 3078, the “HEOA,” August 14, 2008, which amended the CRA. See 12 U.S.C. 2903(d).

² See 12 U.S.C. 2903(b). This language codifies a clarification first published in the *Interagency Questions and Answers on Community Reinvestment* on January 6, 2009.

³ A “consumer loan” is defined in the CRA regulations as a loan to one or more individuals for household, family, or other personal expenditures. Consumer loans include the following categories of loans: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans. Refer to 12 CFR 563e.12(j).

Key aspects of the low cost education loan rule are highlighted below:

- “Low-cost education loans” are defined to mean any private education loans (as defined in the Truth in Lending Act), including loans made under a state or local education loan program,⁴ originated by an institution for a student attending an “institution of higher education,”⁵ with interest rates and fees no greater than those of comparable education loans offered directly by the U. S. Department of Education.⁶
- Since financial institutions may no longer originate education loans under the Federal Family Education Loan (FFEL) program, the final rule does not provide for CRA consideration of such loans.⁷
- The rule provides positive CRA consideration only for low-cost education loans made to low-income borrowers for higher education expenses, consistent with the legislative intent of the HEOA.⁸
- The rule does not cover education loans made to students who attend unaccredited institutions.
- The rule restricts CRA consideration to loans originated (not purchased) by a financial institution. The Agencies believe that this limitation provides an incentive to financial institutions to develop education loan programs that address the economic goals of the statutory amendment.
- The term “low-income” would continue to have the same meaning as it currently has under the CRA regulations, i.e., individual income that is less than 50 percent of the area median income.
- The Agencies will consider low-cost education loans originated by a financial institution to low-income borrowers “particularly in its assessment area(s).” If an institution has adequately addressed the low-cost education loan needs of low-income borrowers in its assessment area(s), examiners will consider low-cost education loans made to low-income borrowers outside of the institution’s assessment area(s).

⁴ This is consistent with the definition of “private education loans” in section 140(a)(7) of the Truth in Lending Act. The Agencies are not aware of any state or local education loan programs that are targeted or available to low-income students in which costs are limited in a manner similar to the federal direct loan program, and for which an alternative definition of “low-cost” might be appropriate.

⁵ This term includes accredited vocational institutions. See sections 101 and 102 of the Higher Education Act 20 U.S.C. 1001-1002.

⁶ The direct loan program formally called the William D. Ford Federal Direct Loan Program is the program against which the rates and fees of private education loans must be compared.

⁷ As of July 1, 2010, no new loans may be made or insured under the FFEL Program administered by the U.S. Department of Education, and no new funds may be appropriated or expended to make or insure such loans. See Title II, Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010). Consequently, the final rule does not cover any loans originated through this program. If an institution has made education loans under the FFEL program, it may receive consideration for those loans under the existing standards applicable to consumer loans.

⁸ See H.R. Rep.No. 10-500 at 203, 297 (2007).

- The revised rule adopts the proposed provision that all types and sizes of institutions will be eligible to receive qualitative consideration for originating “low-cost education loans to low-income borrowers,” regardless of the performance test under which an institution is evaluated.⁹ Like other loans that receive favorable CRA consideration, these education loans should be made in a safe and sound manner. Consequently, institutions should employ the internal controls necessary to ensure the integrity of the loan application process.¹⁰

Summary of the Provision in the Final Rule on Activities Undertaken in Cooperation with Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions

- Where a majority owned institution undertakes activities in cooperation with a minority- or women-owned financial institution (MWOFI) or a low-income credit union (LIC), the effect of these activities on its CRA rating is determined together with its performance in its assessment area(s).
- The final rule reaffirms that a majority-owned institution is not required to adequately address the needs of its assessment area(s) in order to receive favorable consideration for activities it provides to support MWOFI and LICs. However, the Agencies expect to clarify in the next version of the Interagency Questions and Answers that activities located outside of the majority-owned institution’s assessment area(s) will not compensate for poor lending performance within its assessment area(s).
- Activities such as capital investment, loan participation, and other ventures undertaken to assist MWOFI and LICs would be considered when examiners assign a rating to all types and sizes of institutions, regardless of the performance test under which the institution is evaluated.

The joint final rule becomes effective 30 days after the date of publication in the *Federal Register*.

For more information, please contact Stephanie Caputo at (202) 906-6549 or Stephanie.Caputo@ots.treas.gov. To access the final rule, please use the following link:

<http://edocket.access.gpo.gov/2010/pdf/2010-24737.pdf>

⁹ The Agencies do not intend this provision that addresses consideration of low-cost education loans to low-income borrowers to affect CRA strategic plans.

¹⁰ The General Accountability Office (GAO) testimony raises serious questions about financial aid practices at some for-profit colleges. See “FOR-PROFIT COLLEGES: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices,” GAO-10-948T, testimony before the U.S. Senate Committee on Health, Education, Labor, and Pensions, August 4, 2010, which is available at: <http://www.gao.gov/new.items/d10948t.pdf>.