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Attn: Comments
Federal Deposit Insurance Corporation
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Regulation Comments
Chief Counsel's Office
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Re: Proposed Revisions to the Community Reinvestment Act Interagency Questions and Answers Regarding Community Reinvestment
OCC: Docket ID OCC–2009–0010
FRB: Docket No. R–1360
FDIC: RIN 3064–AD45
OTS: Docket ID OTS–2009–0010 (Lela Wingard, 212-552-1447)

Dear Sir or Madam:

JPMorgan Chase Bank, N.A. and its bank affiliates (collectively, "JPMorgan Chase") appreciate the opportunity to comment on the proposal (the "Proposal") by the above-named agencies (the "Agencies") to amend the Community Reinvestment Act (the "CRA") regulations in order to implement

Section 1031 of the Higher Education Opportunity Act (HEOA), which requires that the Agencies consider low-cost education loans that a financial institution provides to low-income borrowers when evaluating the institution's record of meeting community credit needs.

Although we have specific answers to the questions posed by the Agencies as set forth below, we have also provided general comments regarding the Agencies' Proposal.

General Comments

Current Education Loan Landscape

Currently, financial institutions are authorized to provide federal student loans to parents and students attending eligible post-secondary institutions under the Federal Family Education Loan Program ("FFELP"). Such financial institutions, however, will be unable to originate FFELP loans after July 1, 2010 if H.R. 3221, the "Student Aid and Fiscal Responsibility Act" is passed by Congress. Accordingly, Chase recommends that when evaluating low-cost education loans, the Agencies should focus exclusively on private education loans provided by financial institutions.

Positive Treatment of Education Loans

The stated purpose of Section 1031 of the HEOA is to provide incentives under the CRA to financial institutions for making low-cost education loans to low-income borrowers. We commend the Agencies for honoring the legislative intent of this provision by affirmatively stating that the Proposal provides favorable CRA consideration for low-cost education loans to low-income borrowers. See 74 Fed. Reg. 31212 (June 30, 2009). We propose, however, that as with community development lending, the final rule confirm that a financial institution's offering of low-cost education loans to low-income borrowers take into consideration the qualitative factors, such as innovativeness, flexibility, and responsiveness and that the lending programs have only a neutral or positive impact on overall lending test conclusions. As stated in the Large Bank CRA Examiner Guidance, such evaluation should be cognizant of the bank's record of serving the credit needs of the most economically disadvantaged area(s) of its assessment areas and low-income individuals, consistent with safe and sound banking practices. Conversely, if an institution fails to provide such education loans, it will not in and of itself negatively impact its CRA rating.

Additionally, we urge the Agencies to address evaluation of low-cost education loans in a fashion similar to other consumer loans. That is, as a general rule, education loans will not be reviewed as part of the quantitative CRA evaluation unless such loans represent a substantial majority of the financial institution's business. A financial institution may request education loans be considered, but if so, it must collect and maintain data about its education lending.

Consideration of Low-Cost Education Loans for Moderate-Income Individuals

For all other aspects of CRA evaluation, the Agencies assess the record of financial institutions in meeting the credit needs of not only low-income borrowers, but also moderate-income borrowers, consistent with the safe and sound operation of the financial institution. With respect to education loans, however, the Agencies' Proposal only favorably considers low-cost loans to low-income borrowers.

We recognize that the Section 1031 specifically references low-income borrowers. We believe, however, that the Agencies should also positively consider education loans to moderate-income borrowers. This achieves consistency among the loan programs that the Agencies evaluate, and also supports the Administration's efforts to enhance the ability of low- and moderate- income students to afford and remain in college.

Lastly, it is noteworthy that in many cases low-income borrowers have greater access to federal and state grant programs (e.g. the PELL Grant[1], Smart Grant, etc.) as well as subsidized federal loans such as subsidized Stafford loans and Perkins loans. Moderate-income borrowers are not eligible for these entitlements and consequently have larger "gaps" between the cost of education and other federal aid, thus necessitating the use of private education loans.

Low-Cost Education Loan Definition

We believe that the definition of a low-cost private education loan should not be tied to the rates and fees in the federal student loan program because the loan programs are clearly distinct from one another 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. Lastly, for both subsidized and unsubsidized federal student loans, the current interest rates are fixed, as opposed to variable interest rates on private education loans.

In light of the above, lenders who make private education loans must consider market interest rate fluctuations as well as a borrower's credit risk when making a private loan credit decision. And, in many cases, the private education loan interest rates offered cannot compete with the federal loan program. Therefore, JPMorgan Chase proposes the following alternative formula for determining whether an

[1] The Federal Pell Grant Program provides need-based grants to low-income undergraduate and certain post-baccalaureate students to promote access to postsecondary education. Grant amounts are dependent on: the student's expected family contribution; the cost of attendance (as determined by the institution); the student's enrollment status (full-time or part-time); and whether the student attends for a full academic year or less. In 2008, awards ranged from $400–$4,731.

education loan meets the "low-cost" definition: using the 3-month LIBOR index plus a margin of 8 percent for the interest rate threshold and upfront fees not to exceed 4 percent. Currently, 3-month LIBOR is 0.50 percent.

The rationale for this formula is as follows:

- 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 recommended a margin of 8 percent to the current 3-month LIBOR index to be consistent with the current interest rate offered on a PLUS loan, which has an 8.5 percent fixed interest rate.
- We also recommend that the upfront fees do not exceed 4 percent, which is consistent with a PLUS Loan that currently has a 3 percent origination fee and a 1 percent upfront default fee.

PLUS loans, although not comparable to private education loans for the reasons explained above, are more closely aligned with private education loans than other federal education loans because, unlike Stafford loans, PLUS loans can be made in amounts up to the cost of education minus other aid.

Comments on Questions Raised by the Agencies

A. Request for Comments on "Education Loans."

The new statutory provision specifies that the Agencies must consider low-cost "education loans" to low-income borrowers. The Agencies specifically request comment on how to define "education loans."

1. **As proposed, the definition includes only loans for post-secondary education (i.e., education at a level beyond high school). As explained above, section 1031 of the Higher Education Opportunity Act (HEOA) is not expressly limited to loans for higher education. Should the definition also extend to loans for elementary or secondary education?**

JPMorgan Chase recommends that the definition not include loans for elementary or secondary education. Indeed, we believe that considering loans for elementary or secondary education would be inconsistent with the purpose of the statutory provision. Title X, Subtitle C, Section 1031 was included in the HEOA to help make college more affordable and accessible. Further, all of the Title X provisions address loans for post-secondary education. Lastly, the heading for "Subtitle C" is "College Affordability." Accordingly, we agree that the Proposal should include only loans for post-secondary education.

2. **Should the definition include loans made for education expenses at an "institution of higher education" as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 ("HEA"), 20 U.S.C. 1001 and 1002, which would include accredited public and private colleges and universities, whether for-profit or nonprofit, as well as accredited vocational institutions that prepare students for gainful employment in a recognized occupation and certain institutions outside the United States? Should the scope be expanded or narrowed?**

JPMorgan Chase recommends that using the definitions found in sections 101 and 102 of the Higher Education Act of 1965, as amended, is appropriate, and the scope should not be expanded or narrowed.

3. **Should the scope of the definition be expanded to include loans made for education expenses at any "covered educational institution" as that term is defined in section 140 of the Truth in Lending Act, 15 U.S.C. 1650, which would also encompass unaccredited institutions, consistent with the Board's proposed approach to defining that term for purposes of Regulation Z? Are there reasons that weigh against including loans to attend unaccredited institutions?**

It is the position of JPMorgan Chase that the definition of an institution of higher education should not be expanded for purposes of CRA. Rather, we believe that in order for an education loan to be considered favorably under the CRA, the loan must be used for educational expenses associated with attending a Title IV eligible institution of higher education. In the United States, unaccredited degrees may not be acceptable for academic positions, state or federal civil service or other employment. In addition, many states are also considering restrictions on the use of degrees from unaccredited institutions. Such laws represent the public policy of such states and, as such, encouraging banks to make loans to finance the attendance at unaccredited institutions would be inconsistent with that public policy and should not be encouraged. Accordingly, we respectfully suggest it is not appropriate to revise the CRA regulations to encompass loans for attendance at unaccredited institutions.

4. **Should the scope of the definition be narrowed to encompass only loans made for education expenses at an "institution of higher education" as that term is defined for general purposes in section 101 of the HEA, 20 U.S.C. 1001, which is limited to accredited public and nonprofit colleges, universities, and employment training schools in the United States for high school graduates or the equivalent, and public or nonprofit educational institutions in the United States that admit students beyond**

the age of compulsory school attendance, even if they are not high school graduates or the equivalent?

It is the opinion of JPMorgan Chase that the definition of an "institution of higher education" should be consistent with the definition used in the federal student loan programs (Title IV of the Higher Education Act). Specifically, the term, as defined in section 102 of the Higher Education Act, encompasses most educational institutions that offer postsecondary degrees, certificates, or programs of study. Accordingly, the definition found in section 101 of the Higher Education Act is too narrow.

5. **"Private education loans," as defined in section 140(a)(7) of the Truth in Lending Act, would include education loans made by financial institutions under local and state education loan programs. Should all education loans offered to low-income borrowers under state or local education programs, regardless of whether the fees and costs are comparable to those under Department of Education programs, be eligible for CRA consideration? Should private loans not made, insured or guaranteed under a Federal, state or local education program be considered for CRA purposes?**

As mentioned earlier in this letter, the education loan landscape is in a state of flux. Earlier this month, the House Committee on Education and Labor passed the "Student Aid and Fiscal Responsibility Act." If this Act is signed into law, financial institutions will no longer be authorized to make federal student loans. Accordingly, if the Agencies intend to provide CRA consideration to institutions that make low-cost education loans to low-income borrowers, the Agency will need to consider private education loans not made, insured or guaranteed under a Federal, state or local education program.

JPMorgan Chase also recommends that the Agencies use consistent measures among all private education loan programs, without favoring state and local programs. Accordingly, the Agencies should consider whether the loans made under the state or local programs are "low-cost" loans as well.

6. **"Private education loans," as defined in section 140(a)(7) of the Truth in Lending Act, include only closed-end, unsecured loans. That means, for example, that if a borrower obtained a home equity loan for a student's education, it would not be considered a private education loan. Is it appropriate to limit CRA consideration to only closed-end, unsecured private education loans? Why or why not?**

JPMorgan Chase recommends that it is appropriate to define a private education loan consistent with the definition found in the Higher Education Opportunity Act. Specifically, a private education loan is defined as: ''a loan provided by a private educational lender that—

-- ''is not made, insured, or guaranteed under of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); and

-- '' is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

-- ''does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

See Section 1011 of the HEOA.

If the Agencies were to define a private education loan more broadly, it would be operationally difficult for large and small lending institutions to track such open end consumer credit plans, reverse mortgage transactions, residential mortgage transaction, etc, to determine whether a portion of the loan was used for educational purposes. Accordingly, Chase recommends that the definition of a private education loan for CRA purposes be consistent with the definition in the Higher Education Opportunity Act.

7. **The Agencies request comment on whether our proposal to limit education loans to those originated by the institution, rather than purchased by the lender, is appropriate. Why or why not?**

It is the opinion of JPMorgan Chase that evaluating education loans in a CRA examination differently than other loans are examined under the CRA would create a level of inconsistency in the regulation. Education loans should be treated similarly to other CRA-eligible lending, including HMDA, small business, community development, and other consumer loans, where both originations and purchases by the lender are treated the same in a CRA examination.

B. <u>Request for Comments on "Low-Cost" Loans.</u>

The Agencies are proposing to define "low-cost education loans" as education loans that are originated by financial institutions through a program of the U.S. Department of Education or any private education loans, including loans under state or local education loan programs, originated by financial institutions with interest rates and fees no greater than those of comparable education loan programs offered by the U.S. Department of Education. The Agencies note that currently the rates and fees allowed under the FFEL Stafford loan program and the FFEL Plus loan program would typically be used to evaluate whether an institution's education loan is low cost.

1. Is the Agencies' definition of the term "low-cost education loans" appropriate? If not, how should the Agencies define low-cost education loans?

As previously noted, JPMorgan Chase recommends that it would be inappropriate for the Agencies to use the rates and fees allowed under the FFEL Stafford loan program and the FFEL PLUS loan program to evaluate whether a financial institution's education loan is low cost. Rather, as stated above, JPMorgan Chase recommends the following formula for determining whether an education loan meets the "low-cost" definition: using the 3-month LIBOR index plus a margin of 8 percent and upfront fees not to exceed 4 percent. At today's 3-month LIBOR rate, this formula results in an interest rate equal to that of the PLUS Loan (8.5 percent) but allows for the variable nature of the private education loan products and allows financial institutions to react to fluctuations in market rates and underwrite loans in a safe and sound manner.

2. How should the Agencies determine whether a private education loan (including a loan made by an institution under a state or local education loan program) is "comparable" to a Department of Education loan?

JPMorgan Chase recommends that it would be inappropriate for the Agencies to compare a Department of Education Loan to a private education loan. The federal student loan programs, for the most part, are not credit based. Even the PLUS loan program only requires that a borrower not have "adverse credit." Federal student loans are guaranteed against default and interest rates are fixed and set in statute. In the private education loan programs, lenders bear the risk of default. Accordingly, rates and terms are set based on the likelihood that the borrower will repay the loan. This is consistent with safe and sound banking practice.

3. Should the Agencies use the lowest or highest rate and fees available under the comparable Department of Education program?

JPMorgan Chase recommends that the Agencies should not evaluate whether a private education loan is "low-cost" based on rates and fees for federal student loans. That said, should the Agency choose to evaluate a private education loan in relation to the rates offered in the federal loan program, they should use the 8.5% fixed rate PLUS loan. Additionally, PLUS loan borrowers must pay a 1% default fee and a 3% origination fee.

Because substantially all private education loan programs offer variable rate loans, the Agencies should use the following formula for low-cost education loans: using the 3-month LIBOR index plus a margin of 8 percent and upfront fees not to exceed 4 percent. At today's 3-month LIBOR rate, this formula results in an interest rate equal to that of the PLUS Loan (8.5 percent) but allows for the variable nature of the private education loan products and allows financial institutions to react to fluctuations in market rates and underwrite loans in a safe and sound manner.

C. <u>Request for Comments on "Low-Income Borrower."</u>

The CRA regulations currently define "low-income" to mean an individual income that is less than 50 percent of the area median income. The Agencies propose to use that definition to define "low-income borrower."

However, various education programs offered by the U.S. Department of Education are targeted to individuals who have financial needs; and the criteria for the programs vary. Most relevant, for example, are the Federal Student Aid programs available to students seeking assistance for education programs beyond high school. Most Federal Student Aid programs, other than unsubsidized programs available through financial institutions, including unsubsidized Stafford and FFEL Plus loans, consider "financial need." Financial need is determined by dividing the cost of attendance at the school by the expected family contribution (EFC). The EFC is calculated according to a formula that considers family taxable and untaxed income, assets and benefits, e.g., unemployment, family size, and the number of family members who will be attending college. Another example of a Department of Education program that considers income is the TRIO program, which encompasses the Upward Bound, Talent Search, and Student Support Services programs. The TRIO program is targeted to "low-income individuals," meaning an individual whose family's taxable income for the preceding year did not exceed 150 percent of the poverty level amount.

1. **The proposed rule provides that the term "low-income" will have the same meaning as that term is defined in the existing CRA rule with respect to individuals. Consistent with current guidance, if an institution considers the income of more than one person in connection with an education loan, the gross annual incomes of all primary obligors on the loan, including co-borrowers and co-signers, would be combined to determine whether the borrowers are "low-income." Should the Agencies consider defining "low-income" for purposes of this proposed provision differently than the term is already defined in the CRA regulation? If so, why and how? Specifically, how should the Agencies treat the income of a student's family or other expected family contributions to ensure that the CRA consideration provided is consistent with HEOA's focus on low-income borrowers?**

JPMorgan Chase recommends that the term "low-income" have the same meaning as that term is defined in the existing CRA regulation with respect to individuals, which would include individuals whose income is below 50 percent of the area median income. However, it should be noted that in all other lending analysis performed by regulatory agencies in a CRA examination, a bank's performance is based on it meeting the credit needs of low- AND moderate-income individuals or geographies, not only low-income individuals. Again, JPMorgan Chase discourages this inconsistency in the regulation and in CRA examinations.

JPMorgan Chase would also like to comment on the benchmark for evaluating education loans to low-income borrowers. In general, the Agencies look at whether financial institutions lend to "low-income households" when evaluating consumer lending activities. It is our opinion, however, that a strict analysis of education loans to low-income households in a particular area would not accurately reflect the record of a financial institution in meeting the credit needs of its local community. This is because there are so many other factors that determine whether there is an actual need for an education loan. First, the analysis would need to take into consideration how many individuals are enrolled in or will be enrolled in an institution of higher education. Second, the analysis would need to take into consideration whether such individuals had un-met financial need (e.g., cost of education minus other federal aid including loans, grants, scholarships, etc) that could be addressed by a private education loan. Without considering these and other factors, lenders may not receive the appropriate consideration for making low-cost education loans.

D. Request for Comments Regarding Other Education Loan Issues

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.

1. **As discussed above, under the current CRA regulations, institutions may choose to have education loans evaluated as consumer loans under the lending test applicable to the institution. If an institution opts to have education loans evaluated, the loans would be evaluated quantitatively, based on the data the institution provides. Should the agencies also allow an institution to receive separate quantitative consideration for the number and amount of low-cost education loans to low-income borrowers as part of its CRA evaluation under the performance test applicable to that institution, without regard to other consumer loans? Education loans, including those that do not qualify for consideration as "low-cost education loans for low-income borrowers" (e.g., purchased education loans, loans that are not low-cost, and loans that are not made to low-income borrowers) would continue to be eligible for**

consideration as consumer loans, at an institution's option, under existing CRA rules.

JPMorgan Chase agrees with the Agencies that financial institutions should 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.

JPMorgan Chase recommends that, consistent with the treatment of other consumer loans, education loans will not be reviewed as part of the quantitative CRA evaluation unless such loans represent a substantial majority of the financial institution's business. A financial institution may request education loans be considered, but if so, it must collect and maintain data about its education lending.

2. **As discussed above, the Agencies propose to insert the revision regarding low-cost education loans to low-income borrowers into 12 CFR 25.21, 228.21, 345.21, and 563e.21, which apply to all institutions, regardless of the performance test under which an institution is evaluated. Is it readily understandable to institutions and other interested parties that the provision is applicable to all institutions through that placement in the regulation?**

It is the opinion of JPMorgan Chase that the evaluation of education lending should not apply to wholesale or limited purpose institutions. The Agencies should continue to assess a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services, unless education lending constitutes a substantial majority of the institution's business.

E. <u>Request for Comments on the Proposed Inclusion in the CRA Regulations of the Statutory Language Regarding Activities Undertaken in Cooperation with Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions.</u>

The agencies request general comment on the proposal to include in their CRA regulations the statutory language that allows the agencies to consider as a factor in a non-minority- or nonwomen-owned financial institution's CRA evaluation capital investments, loan participations, and other ventures undertaken in cooperation with minority- and women-owned financial institutions and low-income credit unions, consistent with prior agency guidance. In addition, as discussed above, the Agencies propose to insert the revision regarding institutions' activities in cooperation with minority- and women-owned institutions and low-income credit unions into 12 CFR 25.21, 228.21, 345.21, and 563e.21, which apply to all institutions, regardless of which performance test under which an institution is evaluated.

1. **Is it readily understandable to institutions and other interested parties that the provision is applicable to all institutions through that placement?**

It is the opinion of JPMorgan Chase that the provision is applicable to all institutions through that placement in the CRA regulations.

F. Request for Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 133 Stat. 1338, 1471 (Nov. 12, 1999), requires the Agencies to use plain language in all proposed and final rules published after January 1, 2000. Therefore, the Agencies specifically invite your comments on how to make this proposal easier to understand. For example,

- **Have we organized the material to suit your needs? If not, how could this material be better organized?**

  JPMorgan Chase does not propose a better method of organizing this material.

- **Are the requirements in the proposed regulations clearly stated? If not, how could the regulations be more clearly stated?**

  JPMorgan Chase believes that these proposed regulations are clearly stated.

- **Do the proposed regulations contain language or jargon that is not clear? If so, which language requires clarification?**

  It is the opinion of JPMorgan Chase that the language in the proposed regulations is clear.

- **Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations easier to understand? If so, what changes to the format would make them easier to understand?**

  JPMorgan Chase does not propose a format that would be easier to understand.

- **What else could we do to make the regulations easier to understand?**

  JPMorgan Chase proposes no comments to make the regulations easier to understand.

JPMorgan Chase is pleased to have had the opportunity to submit these comments. We would be happy to discuss them further with you.

Sincerely,

Lela Wingard