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OPENING DOORS TO ECONOMIC OPPORTUNITY

June 30, 2015

Stan Ivie
Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square, Suite 2300
San Francisco, CA 94105-2780

Re: **Sallie Mae Bank 2015 Community Reinvestment Act Examination**

Dear Mr. Ivie:

The undersigned organizations are writing to express concern about the Community Reinvestment Act (CRA) performance of Sallie Mae Bank. Sallie Mae Bank's record of serving low- and moderate-income borrowers through its student loan business is inconsistent with both the spirit and the letter of the Community Reinvestment Act, which calls for banks to responsibly meet the credit needs of its entire community. Regulators and consumer advocates have documented significant problems with Sallie Mae Bank's lending and servicing that call into question the Bank's overall record of meeting the needs of low- and moderate-income borrowers throughout its nationwide business footprint. These problems include issues with high-cost private student loans, student loan servicing, and campus prepaid debit cards.

Private student loan origination

Prior to 2008, Sallie Mae Bank originated a significant number of "non-traditional" private student loans—that is, loans that had a high likelihood of default because borrowers attended for-profit schools and had FICO credit scores below 670, or attended not-for-profit schools and had FICO credit scores below 640.[1] The annual percentage rates on these loans were variable and could reach 15 percent or higher.[2] Sallie Mae Bank announced that it would discontinue its nontraditional lending program in 2008, but continued to own and service a number of these loans during the CRA examination period. These non-traditional loans tended to go to students that attended for-profit colleges and their families. More than half of students at for-profit colleges are low-income and more than one-third are students of color.[3] The delinquency and default rates for Sallie Mae Bank's non-traditional loans were extraordinarily high during the examination period compared to the delinquency and default rates for traditional loans. In both

[1] "Annual Report Pursuant To Section 13 Or 15(D) Of The Securities Exchange Act Of 1934." SLM Corporation. December 31, 2013. Page G-4.

[2] Loonin, Deanne and Alys Cohen. "Paying the Price: The High Cost Of Private Student Loans and The Dangers For Student Borrowers." National Consumer Law Center, March 2008.

[3] Lynch, Mamie, Jennifer Engle, and Jose L. Cruz. "Subprime Opportunity: The Unfulfilled Promise of For-Profit Colleges and Universities." The Education Trust. November 2010.

2012 and 2013, the rates of delinquency and default for non-traditional were more than twice the rate of delinquency and default for traditional loans, as illustrated in the table below. The rate of forbearances, which are often not the best repayment option for borrowers, for non-traditional loans was also high. The Community Reinvestment Act directs regulators to consider low-cost education loans made to low-income borrowers as part of the evaluation of the institution's record.[4] The high default rates on loans made to a primarily low-income borrower pool call into question whether these loans were affordable for their borrowers.

Delinquency and default rates for traditional and non-traditional Sallie Mae Bank private student loans during the CRA exam period, 2012-2013.

	2013		2012	
	Non-traditional	Traditional	Non-traditional	Traditional
Percent of loans in repayment and forbearance that are 90+ days delinquent	11%	3%	12%	4%
Percent of loans in repayment and forbearance that are in forbearance or 90+ days delinquent	17%	7%	17%	7%

Source: SLM Corporation 2013 10-K.

Student loan servicing

Federal regulators encouraged banks to work with mortgage borrowers who could not afford their mortgage payments, saying that "prudent workout arrangements that are consistent with safe and sound lending practices are generally in the long-term best interest of both the financial institution and the borrower" and that such arrangements may result in favorable consideration under CRA.[5] This reasoning should hold true in the private student loan sphere as well. Sallie Mae Bank's record of extremely high default rates suggests that they did not pursue prudent workout arrangements for these borrowers. Both traditional and non-traditional private student loans lack a number of important borrower protections that are included with federal student loans, such as guaranteed flexible repayment options, rights to discharges due to death or disability, or public service forgiveness.[6] Public narratives from some of the 575 complaints made by Sallie Mae Bank borrowers to the Consumer Financial Protection Bureau (CFPB) during the examination period illustrate some of the challenges borrowers face in trying to negotiate affordable repayment plans:

[4] Housing And Community Development Act Of 1977—Title Viii (Community Reinvestment) Sec. 804 (d)
[5] "Federal Regulators Encourage Institutions to Work with Mortgage Borrowers Who Are Unable to Make Their Payments." Federal Financial Institutions Examination Council joint press release. April 17, 2007.
[6] Loonin, Deanne. "The Sallie Mae Saga: A Government-Created, Student Debt Fueled Profit Machine." National Consumer Law Center, January 2014.

"I have a private loan with Sallie Mae. I called them to try to get them to lower my payment or interest rate due to my income. I have XXXX[7] children and only made a small on my taxes [sic] last year I need help with my payment or it will ruin my credit. They REFUSED to help me at all. I am VERY unhappy."

"I called Sallie Mae to proactively figure out a rate reduction plan that would help me pay less per month with a lower interest rate due to increasing living expenses. I have good credit and I have been making my payments -- I 'm actually ahead right now because I started paying large sums per month before my loans went into repayment. My Sallie Mae loans will soon require I pay a hefty $350.00 per month; this is on top of my other Federal loans and living expenses… I need to figure out a refinancing or rate reduction plan with Sallie Mae before I suffer from delinquency, which could happen as soon as XXXX months from now when I move and settle in a different area. I'm filing this complaint because Sallie Mae is not willing to work proactively with me as a borrower to stop delinquency, forbearance, or bankruptcy from happening."

"I currently do an income based repayment with the federal loans and my payment is $0.00 a month. However I have a private loan through Sallie Mae that is about to go into default because I can't afford to pay the minimum payment. Sallie Mae continues to hound me for money because my account is past due but still refuse to work with me on repayment. I am seriously considering filing bankruptcy because I don't know what else to do."

"I am willing, but unable to make payments on my loans. Due to Sallie Mae's inconsistent and lack of communication with me regarding my account, I am at risk of going into default on my loans. The times I was able to reach someone at the customer service department via telephone, I received conflicting information from each person I spoke with and was left even more confused about the status of my account. Defaulting on my loans will not only be a negative outcome for myself but for the lender as well. I am currently employed in my field and working to progress in my career, but I simply do not make enough money to repay the loans and manage necessary living expenses."[8]

In addition to complaints about the lack of loss mitigation options, borrowers who filed complaints to the CFPB also cited problems with receiving misleading information about the loans at origination, problems with payment processing and allocation, problems with servicemember-related protections, aggressive debt collection tactics, and miscommunications regarding servicing issues. The FDIC and the Department of Justice settled lawsuits against Sallie Mae (including Sallie Mae Bank) on May 13, 2014, which alleged that Sallie Mae regularly violated the Servicemembers Civil Relief Act by failing to provide members of the military loans at the six percent rate cap required by law and obtaining default judgements

[7] "XXXX" indicates information redacted in the CFPB's Consumer Complaints Database
[8] CFPB consumer complaint database accessed 6/25/2015.

against servicemembers.[9] Illinois Attorney General Lisa Madigan launched a multistate investigation in February, 2014, against Sallie Mae based on complaints submitted to state Attorneys General about abusive debt collection tactics and servicing issues for both federal and private student loans.[10]

Campus Prepaid Debit Cards

Sallie Mae Bank also offered a prepaid debit card used to disburse financial aid during the assessment period, though it sold this line of business to Higher One in May 2013.[11] The Office of the Inspector General for the Department of Education uncovered a number of problems with Sallie Mae Bank's debit card through an investigation of its business at a community college.[12] Sallie Mae Bank aggressively marketed its debit card to students in order to persuade them to choose its debit card over other options, including a preexisting bank account. Some of the language Sallie Mae Bank used implied that the debit card was the only option available to students, and the marketing implied that the school endorsed the Sallie Mae Bank card. Sallie Mae Bank charged a wide variety of fees to students for using its prepaid debit card, including high replacement card fees and inactivity fees. Sallie Mae Bank included financial incentives in its contract with the community college that encouraged the college to direct students to Sallie Mae Bank's prepaid debit card. In violation of federal regulations, there were no fee-free ATMs available on the community college campus where students with Sallie Mae Bank prepaid debit cards could access their funds.

The features of the Sallie Mae Bank campus prepaid card and its marketing tactics drained wealth from student consumers, who were reliant on federal financial aid and typically have limited incomes. Community colleges, in particular, serve a predominantly low- and moderate-income population. These products and practices tarnish Sallie Mae Bank's record of serving low- and moderate-income communities.

Previous CRA Performance

Troublingly, Sallie Mae Bank has received "Needs to Improve" ratings on its last three CRA examinations – which is every examination it has received since it was chartered in 2005. The bank routinely met or exceeded the goals set out in its CRA strategic plans, but violations of the Equal Credit Opportunity Act (ECOA) and Section 5 of the Federal Trade Commission Act

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[9] "Justice Department Reaches $60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans." Department of Justice press release. May 13, 2014.
See also: "FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act." Federal Deposit Insurance Corporation press release. May 13, 2014.
[10] Nasiripour, Shahien. "Sallie Mae's Woes Grow With Illinois Probe." Huffington Post. February 21, 2014.
[11] "Higher One Acquires Sallie Mae's Campus Solutions Business." Sallie Mae press release. May 7, 2013.
[12] "Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds." United States Department of Education Office of Inspector General. March 10, 2014.

regarding Unfair and Deceptive Practices (UDAP) resulted in downgrades. The repeat failure of any bank to receive at least a "Satisfactory" rating on their CRA assessments is of serious concern, but Sallie Mae Bank's failure to achieve a minimally satisfactory rating on a single CRA examination is unacceptable. The FDIC needs to work closely with Sallie Mae Bank to ensure that violations of consumer protection laws no longer impede the bank's ability to responsibly serve the credit needs of borrowers.

Sallie Mae Bank's CRA history also exposes some challenges in the way that the Community Reinvestment Act is currently applied and enforced. Primarily, Sallie Mae Bank's repeated failures highlight the particular weakness of CRA's penalties for non-traditional banks. For an internet-based, limited-purpose bank that is not looking to merge with or acquire another financial institution, the restrictions on merging or opening new branches hold little weight in encouraging the bank to meet their CRA obligations. This is a structural challenge in the way that CRA is enforced, and as more non-traditional banks become increasingly visible and potentially dominant in certain markets, the prudential regulatory agencies will need to carefully consider whether the current enforcement mechanisms are enough to deter non-traditional banks from deviating from their CRA obligations. Sallie Mae Bank is critical to the profitability of its holding corporation, SLM Corporation, because it allows the corporation to access deposit funding at low interest rates and to access liquidity through the sale of asset-backed securities collateralized by private education loans originated by Sallie Mae Bank.[13] Regulators should consider whether they could use these leverage points as incentives for compliance with CRA.

In addition, Sallie Mae Bank's CRA activity is currently assessed entirely on their performance in and around Salt Lake City, Utah, despite a national lending and deposit footprint. As a non-traditional bank, Sallie Mae Bank's only physical branch is located in Salt Lake City. Under current CRA guidelines, this means that Sallie Mae Bank's only assessment area for CRA purposes is centered on that single branch. The issue of mismatched assessment areas is much greater than Sallie Mae Bank alone, but as a bank that plays a particularly crucial role for students across the country, particularly low- and moderate-income ones, it is an especially clear example of the problem. Sallie Mae Bank's greatest impact on low- and moderate-income people and communities is through their national student lending and servicing businesses, but those receive little to no scrutiny in the bank's overall CRA performance. Instead, the bank is evaluated primarily on their community development lending, investments and grants in the greater Salt Lake City region – important endeavors no doubt, but no real reflection of the bank's overall commitment to serving low- and moderate-income borrowers.

[13] "Annual Report Pursuant To Section 13 Or 15(D) Of The Securities Exchange Act Of 1934." SLM Corporation. December 31, 2014.

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Conclusion

The complaints from borrowers, high delinquency rates on high-cost loans to a largely low-income population that indicate an unwillingness of Sallie Mae Bank to seek affordable repayment options for borrowers, harmful campus prepaid card features and practices, and investigations from law enforcement indicate that Sallie Mae Bank did not effectively meet its community reinvestment obligations during the assessment period. The inadequate penalties for noncompliance with CRA, especially for limited-purpose banks, and the outdated method of defining assessment areas mean that Sallie Mae Bank could continue to inadequately serve the banking needs of its low- and moderate-income consumers throughout the country without meaningful repercussions from regulators.

Thank you for the opportunity to comment on Sallie Mae Bank's Community Reinvestment Act examination. We hope to meet with staff from the FDIC soon to discuss ways that community organizations and the regulatory agencies can engage with Sallie Mae Bank to address their community reinvestment performance.

Sincerely,

Americans for Financial Reform

California Reinvestment Coalition

Center for Responsible Lending

Consumer Action

Consumers Union

Heartland Alliance for Human Needs and Human Rights

Illinois Asset Building Group

Illinois PIRG

NAACP

National Community Reinvestment Coalition

National Consumer Law Center (on behalf of their low-income clients)

New Economy Project

Reinvestment Partners

USPIRG

Woodstock Institute