BANK POLICY INSTITUTE

May 2, 2022

Via Electronic Mail

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Capital Assessments and Stress Testing Reports (FR Y-14A/Q/M; OMB No. 7100-0341)

To Whom it May Concern:

The Bank Policy Institute[1] appreciates the opportunity to comment on the proposal by the Board of Governors of the Federal Reserve System to extend for three years, with revision, the Capital Assessments and Stress Testing Reports (FR Y-14A/Q/M; OMB No. 7100-0341).[2] We support the stated goal of the revisions "to better identify risk as part of the stress test, to better facilitate data reconciliation, and to mitigate ambiguity within the instructions"[3] and the proposed revisions to the FR Y-14A. However, we have concerns with the proposed implementation timeline for the changes to the FR Y-14M and FR Y-14Q and suggest several adjustments that should be made to the proposed revisions before they are adopted. Additionally, there are several proposed revisions for which the burden of implementation far outweighs the utility of the data provided and therefore these proposed revisions should not be adopted. Appendix A to this letter includes additional technical recommendations and requests for clarification on the proposed changes.

I. Implementation of the revisions to the FR Y-14M and FR Y-14Q reports should be delayed until the later of the 2Q2023 report date or six months following the release of final forms and instructions.

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1 The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

2 87 Fed. Reg. 11432 (March 1, 2022).

3 Id at 11434.

We are supportive of the proposed effective date of December 31, 2022, for the changes related FR Y-14A, as these revisions align the FR Y-14A with the Stress Capital Buffer (SCB) final rule and existing CCAR FAQs. However, the proposed effective date of September 30, 2022, for the proposed revisions to the FR Y-14Q and FR Y-14M, would not provide sufficient time for firms to make the necessary systems and process changes for implementation. With comments on the proposal due May 2, 2022, final forms and instructions are unlikely to be made available until at least June. This would leave respondents with less than four months to implement these substantial changes and firms anticipate needing a minimum of six months after the release of final forms and instructions to carry out the proposed revisions.

Implementation of the proposed revisions, which are substantial and contain dozens of significant changes to reporting, will require coordination between internal stakeholders to modify data collection systems and develop new data collection processes to implement the revised reporting requirements. Particularly for several of the proposed new items, institutions may have to manually obtain the required data as it is not currently captured in the relevant system. Further, in some cases, external vendors will need to be engaged and consulted to ensure compliance. Firms will then need to modify and apply reporting controls as well as data governance procedures and these revised processes will then need to be tested to make them operational and fully compliant prior to the effective date. Each of these functions requires ample time and given the number of proposed new attributes, changes across sub-schedules and clarifications needed, completing implementation within four months is not feasible. We therefore strongly recommend that the Federal Reserve delay implementation of the proposed revisions to the FR Y-14M and FR Y-14Q until the later of the June 30, 2023, report date or at least six months following the release of finalized forms and instructions.

II. We support the proposed revisions to the FR Y-14A related to the assumptions associated with CCAR submissions, but adjustments should be made to the reporting instructions to better align with the information requested in Schedule A.

BPI strongly supports the proposed revisions to the reporting of planned business plan changes and capital action assumptions of the Summary CCAR submission under the Supervisory Severely Adverse (SSA) scenario to match those of the Internal stress scenario. Specifically, under the SSA scenario, the proposal would adjust the assumption around business plan changes to include only the effects that the firm anticipates given the scenario and would require firms to develop and use alternative capital actions, as opposed to the planned capital actions under the baseline scenario. As BPI has commented previously, there is no value in continuing to test the SSA scenario with planned capital actions in light of the adoption of the SCB.[4] We therefore strongly support the Federal Reserve finalizing these changes as proposed.

Additionally, BPI appreciates the proposed incorporation of the definitions of "planned capital actions" and "alternative capital actions" previously contained in in CCAR Q&A GEN0500 into the reporting instructions for Schedule A of the FR Y-14A to provide clarity around each of the terms. However, the below language contained in in CCAR Q&A GEN0500 regarding the need "to ensure consistency" with the Internal baseline scenario are no longer necessary.

> "To ensure consistency, a firm should include the following assumptions when projecting its capital actions:

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[4] BPI Comment letter re: Amendments to Capital Planning and Stress Testing Requirements for Large Bank Holding Companies (November 20, 2020), available at https://bpi.com/wp-content/uploads/2020/11/BPI-Offers-Technical-Suggestions-Recommendations-on-Fed-Capital-Plan-Rule.pdf.

- Assume that the dollar value of dividends, repurchases, and redemptions of capital Instruments do not vary from the amount in the Internal baseline scenario.
- Assume that the dollar value of the issuance of capital instruments does not vary by scenario from the amount in the Internal baseline scenario unless the scenario directly impacts shareholder's equity or consideration paid in connection with a planned merger or acquisition."[5]

Under the proposed revisions to the FR Y-14A, alternative capital actions would be utilized for purposes of both the Internal Stress and SSA scenarios. As alternative capital actions will likely differ from planned capital actions under the baseline scenario, we recommend that the language regarding consistency with the baseline scenario pulled from CCAR Q&A GEN0500 be removed from the reporting instructions.

III. The Federal Reserve should either align the definition of commitments in the FR Y-14Q with the definition contained in the U.S. capital rules or acknowledge the differences in the definition of commitments between the FR Y-14Q, other reports, and the U.S. capital rules.

The proposal would modify the language in the instructions for Schedule H.1 of the FR Y-14Q to "clarify that only lines of credit that are unknown to the customer must be excluded from Schedule H.1. This modification would ensure that all applicable commitments are reported, other than the clearly defined exclusions."[6] This change would replace the instructions to "[e]xclude informal 'advised lines' (i.e., a revocable commitment by the bank to lend funds for up to a specified period of time, usually one year, sometimes referred to as a guidance line) from commitments."[7] As a result, this proposed clarification on the exclusion of informal "advised lines" would now require firms to report certain credit facilities as commitments in Schedule H.1, even though such facilities are intentionally structured and documented such that the lender is not under any legal obligation to extend credit or purchase assets (Defined Facilities).

Importantly, this new requirement to report Defined Facilities as commitments in Schedule H.1 would be inconsistent with the definition of a commitment in the current U.S. capital rules. Under the U.S. capital rules, a "commitment" is defined as any "***legally binding arrangement*** that ***obligates*** a banking organization to extend credit or to purchase assets."[8] The key factor for determining whether a credit arrangement is a commitment and therefore subject to a capital assessment is whether the lender in such an arrangement is *legally obligated* to extend credit. The U.S. capital rules require that risk-weighted assets and leverage exposure amounts be calculated in respect of off-balance sheet exposures, including commitments. Therefore, this proposed revision that would require Defined Facilities to be reported as commitments, would result in an inconsistency in the scope of the

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5 Board of Governors of the Federal Reserve System, *Draft instructions for the Capital Assessments and Stress Testing Reports (reporting Form FR Y-14A)* (Modified February 2022), *available at* https://www.federalreserve.gov/reportforms/formsreview/FR_Y-14A_Instructions%202022.pdf.

6 87 Fed. Reg. 11432 at 11439.

7 Board of Governors of the Federal Reserve System, *Draft instructions for the Capital Assessments and Stress Testing Reports (reporting Form FR Y-14Q)* (Modified February 2022) at page 168, *available at* https://www.federalreserve.gov/reportforms/formsreview/FR_Y-14Q_Instructions_draft%202022.pdf.

8 12 CFR 217.2 (emphasis added).

arrangements reported in Schedule H and those commitments that attract RWA within the capital framework. If finalized as proposed, Defined Facilities would be included in the reporting that flows into the calculation of the SCB, despite being properly excluded from the calculation of RWAs and leverage exposure for other regulatory capital ratios.

BPI submitted a comment letter to the Federal Reserve in March 2020 regarding the reporting of these Defined Facilities in the FR Y-9C as unused commitments.[9] In the letter, we highlight that the reporting of these Defined Facilities in the FR Y-9C as unused commitments could have broad reaching implications that extend beyond reporting requirements and into firms' required capital levels, (e.g., potential impact on the GSIB surcharge and/or risk weighted assets/leverage exposure given the interconnected nature of reporting requirements). The same would be true for requiring that Defined Facilities be reported as commitments in the FR Y-14Q. More broadly, if one of the Federal Reserve's intended overall outcomes is an increase to firms' capital requirements for such facilities, these increases should be considered in the context of changes to the broader future capital framework, not through changes to reporting requirements, and should be subject to public notice and comment in accordance with the Administrative Procedure Act.

In light of the aforementioned inconsistencies and potential implications, we recommend that the Federal Reserve align the definition of commitments in the FR Y-14Q with the definition contained in the U.S. capital rules. Additionally, any change in the reporting of commitments in the FR Y-14Q, such as the proposed revision that would require Defined Facilities to be reported as commitments, should consider the implications to other reports. Further, the inclusion of Defined Facilities in Schedule H will potentially have a material impact on firms' capital requirements if these Defined Facilities receive the same treatment as unused commitments in the calculation of firms' losses under stress. As noted in the March 2020 comment letter, from an economic perspective, in a distressed credit situation, Defined Facilities pose meaningfully less risk to a lender than unused commitments. Yet, if Defined Facilities were required to be reported in Schedule H of the FR Y-14Q and received the same treatment as unused commitments in the stress loss calculation, that would generally overstate projected stress losses and could result in a notable increase in capital. Given the potential material impact to stress losses affecting the calculation of the SCB, and ultimately banks' required minimum capital levels, we recommended that the Federal Reserve reconsider the reporting of such Defined Facilities in Schedule H so as to avoid stress losses on facilities which are currently excluded from the broader capital framework.

Alternatively, if the preference is to not align the definition of commitments in the FR Y-14Q with the capital rules, we would urge the Federal Reserve to, at a minimum, clearly articulate that there are differences in the definition of "commitments," and therefore reporting differences of Defined Facilities, between the FR Y-14Q and other use cases such as the U.S. capital rules or other regulatory reports. Specifically, the Federal Reserve should acknowledge that the population of commitments reported on the FR Y-14Q, which would include Defined Facilities, is more expansive than other reports. Additionally, the difference between Defined Facilities and unused commitments should be considered and distinguished in the calculation of a firm's stress losses.

If the Federal Reserve does not accept either of these recommendations with respect to the definition of commitments and proceeds to finalize the change as proposed, firms would require clarification around what is meant by lines of credit "unknown to the customer" to allow them to appropriately scope the required facilities in Schedule H.1.

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9 BPI, *Comment Letter re: Reporting of Certain Credit Facilities in the FR Y-9C* (March 27, 2020) (attached hereto as Appendix B).

IV. The Federal Reserve should not proceed with several of the proposed revisions to the FR Y-14M and FR Y-14Q.

A. FR Y-14M - New "Fair Value Amount" Line item.

The proposal includes the addition of Line 144 "Fair Value Amount" to Schedule A of the FR Y-14M to capture the fair-value amount of held-for-sale (HFS) loans and held-for-investment (HFI) loans measured under the fair value option (FVO). Firms' data warehouses do not typically have or maintain this information at the account level for HFS or FVO loans, as the fair value amounts are not in the servicing system at the account level. When loans are put into HFS, HFI, or FVO status, the fair value adjustments are typically recorded at a high level for a block or entire population of loans within the general ledger, and not at the account level. For example, if a pool of loans with a balance of $100 is put into HFS and pricing indicates a value of $98, an entry is made in the general ledger for a fair value adjustment of $2, while the balances of the individual accounts do not reflect the fair value adjustment. Therefore, sourcing the data to report the current FVO of the loan as of the reporting month if held under the FVO or HFS would be exceptionally burdensome, would require significant manual effort, and involve extensive allocation processes. Additionally, for some firms, it would require using an ancillary source to obtain the relevant data as such data is not readily available, further increasing the burden. Furthermore, firms already provide substantial FVO and HFS data on retail loans and leases in Schedule J "Retail Fair Value Option/Held for Sale" of the FR Y-14Q that would allow the determination of such information on a portfolio basis. In light of these challenges associated with sourcing the necessary data and as the Federal Reserve currently collects similar data in the FR Y-14Q, the burden associated with implementing this new line item far outweighs the benefit, and we therefore recommend that the Federal Reserve not proceed with implementing this new item.

B. FR Y-14Q – Schedule H.4 New Internal Risk Rating items.

The proposal would add three new fields to Schedule H.4 that would require firms to report the minimum and maximum probability of default (PD) associated with each internal risk rating, as well as the PD calculation method used to determine the minimum and maximum PDs. However, firms utilize various approaches to determine the PDs associated with their internal risk ratings that do not lend themselves to this type of reporting. Some firms segment their portfolio such that an individual internal rating may correspond to different PDs across segments. Consequently, such firms' internal risk rating methodology would reflect multiple PDs associated with a single rating and result in a relatively wide range of PDs for an individual internal risk rating and/or an overlap in minimum and maximum amounts between ratings. This overlap may arise from a particular segment having a high PD for a given rating, while another segment may have a relatively low PD for the same rating. Other firms utilize an approach that maps all portfolio segments into a single universal scale with one PD associated with one rating, resulting in a single PD for each given rating. For such firms, minimum and maximum PDs may refer to minimum and maximum PDs that are observed for each rating from Point-in-Time (PIT) default data or upper and lower bounds of Through-the-Cycle (TTC) PD estimates (so-called error range). While we support the goal of these new items "to assess credit risk more easily across firms by providing benchmark values for internal rating,"[10] due to the range of practices firms utilize in rating methodologies, minimum and maximum PD data may not be easily comparable between reporting entities as the Federal Reserve seems to have intended. Especially, if minimum and maximum PDs are observed from PIT default data that is reported, it may not allow for comparability across firms as the

[10] 87 Fed. Reg. 11432 at 11438.

minimum PDs for investment grade ratings will be zero. We therefore recommend that the Federal Reserve not implement these three new line items.

As an alternative, the Federal Reserve should look to the facility level data and the associated PDs currently reported in Schedule H.1 and Schedule H.2 filings to provide insight into the composition of firm portfolios and the distribution of PDs across the industry and use the information in its supervisory process. Utilizing this data, the Federal Reserve would still gain additional understanding of the distribution of ratings or PDs at the exposure level rather than seeing only the minimum and maximum of a range. This would eliminate the need for this new expansive and burdensome dataset in Schedule H.4, while still allowing the Federal Reserve to easily assess credit risk across firms. Furthermore, while a firm's risk rating methodology may allow for minimum or maximum values, the proposed information collection would not provide any necessary information with which to inform the Federal Reserve if any facilities are actually assigned such values. Further, there are revisions to the Basel capital rules forthcoming, and it has been stated that "[t]he banking agencies are discussing the fate of internal models in the future US bank capital framework,"[11] which could potentially eliminate the existing internal ratings-based approach (advanced approaches). Absent the advanced approaches, there would no longer be a need to maintain PDs and therefore it would be inappropriate to require firms to take on the significant burden of incorporating these new line items into their reporting when such attributes may no longer be utilized under the revised capital standards.

If the Federal Reserve does not accept our recommendation and proceeds to finalize the proposed revisions, clarification and changes related to the proposed new PD items would be needed. Specifically, clarification is needed on what firms should report in the proposed minimum and maximum PD fields if there are no ranges associated with the internal risk ratings. As indicated above, for certain firms minimum and maximum PDs may mean minimum and maximum PDs that are observed in PIT default data or upper and lower bound of TTC PD estimates. Also, some firms have no range associated with the rating of 9.0 (Default).

Additionally, the instructions for the new minimum PD and maximum PD columns would require firms to report values to 4 decimal places, while for some firms, values are distinguished at the 5th decimal place (i.e., 0.00011 to 0.00028). We therefore request that the field format for the new minimum and maximum PD columns be set as alpha-numeric and to allow up to 7 characters. This would allow firms to include a "null" or "NA" value when a range or rating is not available and would be consistent with how firms currently distinguish their data.

Further, a firm that segments its portfolio to determine PDs may have segments which are assigned a PD and use the firmwide rating scale, but this segment falls outside the reporting scope of Schedules H.1 or H.2. In this case would a firm be expected to consider this segment in establishing the possible range of PDs for a given rating?

Finally, the proposal has provided two allowable values for PD Calculation Method – 1: Through the cycle, 2: Point in time. It is unclear how firms should complete this field if the reporting institution uses a hybrid method. Therefore, firms require clarification from the Federal Reserve on how to report the PD Calculation Method when a hybrid method is used.

C. FR Y-14Q – Schedule L.5.1 Top 25 Ranking /Client-cleared derivatives exposures.

The proposed revisions would require firms to rank their top 25 exposures for client-cleared derivatives on Schedule L.5 using two different methods. The draft reporting instructions direct a firm

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11 https://www.risk.net/regulation/7840651/fed-casts-doubt-on-future-of-basel-internal-models-in-us.

for method 1 to exclude client-cleared derivatives for the purposes of ranking the Top 25 for both non-CCAR and as-of CCAR quarters but note that "a firm should incorporate all the relevant client cleared derivative exposures associated with those counterparties for the purposes of reporting all required data in L.5.1 and L.5.4 once the top 25 counterparties are identified." Under method 2, firms are required to rank their top 25 counterparty exposures whereby the population is limited to a firm's exposures to clients driven by client cleared derivatives, which could result in an overlap in reporting client-cleared derivatives exposures if the same counterparties are identified as top 25 under both methods.

The proposal also indicates that the new ranking methodology would "enable the Board to continue to exclude exposures to client-cleared derivatives from the calculation for stressed losses and would provide more insight into the size and diversity of these exposures."[12] However, the proposed changes would require banks to complete the significant process of implementing this new ranking methodology that would incorporate client-cleared derivative exposures in sub-schedule L.5.1 for the as-of CCAR (stressed), even though the data for client-cleared derivatives would not be used in the calculation of stress losses and would only be used as a means for the Federal Reserve to gain insight into the exposures. The current submission of granular unstressed data for client-cleared derivatives already provides substantial insight to the size and diversity of exposures that firms have. It would be a significant operational burden for banks to incorporate granular client-cleared derivative exposures into the firms' internal and supervisory stress scenarios. As client-cleared derivatives are excluded from the largest counterparty default loss that is reported in Line 3 under the supervisory scenario in FR Y-14A Schedule A.5, Counterparty Credit Risk, banks would also need to maintain dual processes between FR Y-14Q and the FR Y-14A reports, which adds complexity to the reporting and increases reporting burden. In light of the significant operational burden associated with changing reporting processes to accommodate the proposed ranking methodology, which would only produce data with minimal utility, the Federal Reserve should maintain the current instructions for identification of the top 25 counterparties.

If the Federal Reserve nonetheless proceeds with the new ranking method, it would be helpful to better understand the Federal Reserve's intent in stressing client clearing portfolios that would ultimately be excluded from the calculation of stressed losses, and there are also several clarifications required. Specifically, if a counterparty is of sufficient size to be captured in both ranking method 1 and ranking method 2, are firms required to report such counterparty twice or only under ranking method 1? Additionally, under ranking method 2, would aggregate columns, such as Total Net Current Exposure (CE), only include client clearing exposure to the parent entity under the ranking methodology or would they be inclusive of both client clearing and non-client clearing exposure to a firm?

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[12] 87 Fed. Reg. 11432 at 11436.

The Bank Policy Institute appreciates the opportunity to comment on the proposal. If you have any questions, please contact the undersigned by phone at 646.757.0380 or by email at alix.roberts@bpi.com.

Respectfully submitted,

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Appendix A

Technical recommendations, requests for clarification, and questions:

FR Y-14Q:

1. **Schedule C:**

   a. **Proposed Fair Value adjustment MDRM vs. Fair Value of Swaps – MDRM CQCNR631**: Comparing the instructions for the MDRM "Fair value adjustment at the quarter end for subordinated debt securities that are carried at fair value" and to the existing MDRM "Fair value of associated swaps ($Millions)" - CQCNR631, it is unclear how these fields are related to each other and what each MDRM is meant to capture. Is the newly proposed MDRM meant to capture all fair value adjustments on long term debt that have a fair value hedge relationship and the existing MDRM CQCNR631 meant to capture only the fair value of outstanding swaps?

   b. **Column P: Interest expense for the quarter (net of swaps):** Can the Federal Reserve clarify "net of swaps" in Column P? Should firms report a quarter-to-date (QTD) profit and loss (P&L) movement of the interest expense (coupon) on sub debt instrument **only** in Column P?

   c. **Column Q: Interest expense for the quarter (with swaps, excluding any gains or losses due to the fair value adjustment of ASC815/FAS 133 hedges):** Confirmation is needed that firms would need to report QTD interest P&L movement on debt + swap interest (i.e., debt couponing and amortization of original issuance discount/premium and underwriting fee + swap interest accrued and realized cashflow) in Column Q.

   d. **Column R: Interest expense for the quarter (with swaps, this number should reconcile to the quarterly number reported in FR Y-9C BHCK4397 for all subordinated debt instruments):** Confirmation is needed that firms would report QTD movement on Interest (Column Q) + FAS 133 fair value adjustment for both debt and swaps in Column R.

   e. **Column S: Fair value adjustment at the quarter end for subordinated debt securities that are carried at fair value:** Can the Federal Reserve clarify if Column S is specifically asking for FAS 133 basis adjustment? Otherwise, subordinated debt portfolio is non-fair value, and a zero value should be reported.

   f. **Column K: Fair value of associated swaps:** Can the Federal Reserve confirm whether the fair value swap reporting in Column K should include accrued interest (i.e., is the fair value swap clean or dirty)?

2. **Schedule F:**

   a. **Public Welfare Investments:** The proposal would require firms to isolate and report private equity exposures that qualify as public welfare investments (PWI) in new line items. The draft instructions specify that a public welfare investment is defined as an equity investment in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas.

      The proposed instructions state, "[f]or reporting PWIs made at the bank holding company level, an affordable housing PE investment is recognized by the Federal

Reserve if it also qualifies under 12 CFR 225.28(b)(12) and 12 CFR 225.127. For reporting PWIs made at the bank level, an affordable housing PE investment is recognized by the Federal Reserve if it also qualifies under the applicable PWI criteria of the bank's primary Federal regulator." PWIs in affordable housing can be further distinguished as either "Qualified Investments" (as defined in ASC 323 Accounting for Investments in Qualified Affordable Housing Projects), in which substantially all of the projected benefits are from tax credits and other tax benefits, or those investments which do not qualify for tax credits and other tax benefits. As the proposed revisions would add new line items to isolate and report private equity exposures that qualify as PWIs in Schedule F, can the Federal Reserve confirm that the FR Y-14Q Sub-schedule F.25 Section 42 Housing Credits line is intended for Qualified Investments in which FVO has been elected and that the FR Y-14Q sub-schedule F.24 Affordable Housing PWI line is intended for Affordable Housing investments not eligible for tax credits? This would be consistent with FAQ Y140001106 which states that tax-oriented investments (TOIs) held under equity method accounting should not be included in the Other Fair Value Assets worksheet (sub-schedule F.25) of Schedule F and that TOIs under equity method accounting are not subject to the Global Market Shock (GMS) in supervisory stress scenarios.[13] Additionally, we continue to believe that non-fair value private equity investment exposures should be removed from the GMS and subject to macro scenario for evaluating losses associated with these exposures. In the December 2020 Final Approval of FR Y-14 A/Q/M revisions, the Federal Reserve stated "[a]t this time, the Board believes the macro scenario is more appropriate than the global market shock for evaluating losses associated with non-fair value private equity investment exposures, but will continue to analyze the issue," which indicates that the Federal Reserve also deems the macro scenario to be more appropriate.

b. **Accrual Loan Hedge and FVO Loan Hedge Submission:** We appreciate the Federal Reserve's clarification of the scope for reporting accrual loan and fair value option (FVO) loan hedges across Schedule F. Additionally, we support the change in the draft reporting instructions that these submissions must be reported as of calendar quarter-end, which confirms industry practice to apply macroeconomic scenario projections to these submissions instead of GMS. However, there are certain sub-schedules in Schedule F that potentially either do not impact the macroeconomic scenario projections or are not used as an input by firms to determine macroeconomic scenario projections. For example, the information required in sub-schedules F.22 IDR Corporate Credit and F.23 IDR-Jump of Default are presumably only used as informational or in the calculation of Trading Incremental Default Losses. Therefore, the data submitted in these sub-schedules as part of the Accrual Loan Hedge and the FVO Loan Hedges submissions is not relevant to firms' macroeconomic scenario projections. Furthermore, these sub-schedules which require firmwide aggregation and netting are significantly operationally burdensome. For these reasons we request the Federal Reserve allow firms to submit blank F.22 and F.23 sub-schedules for the Accrual Loan Hedge and the FVO Loan Hedges submissions.

3. **Schedule H:**

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13 *See* Board of Governors of the Federal Reserve System, *FR Y-14 Information Collective Q&As* (Last Update: March 04, 2022), *available at* https://www.federalreserve.gov/publications/fr-y-14-qas/fr-y-14-qas-fr-y-14a.htm.

a. **Corporate Loan Data:** The draft general instructions for the Obligor Financial Data Section of H.1 appear remove the numbering for the exclusion for "a nonprofit organization or federal, state, or local government or related agencies."[14] As there is no mention of a change to this portion of the reporting instructions in the proposal and as the text regarding this exclusion remains, can the Federal Reserve confirm that this is merely a formatting change and that data for an obligor that is a nonprofit organization or federal, state, or local government or related agencies should continue to be excluded from Schedule H.1?

4. **Schedule L:**

a. **Consolidated or parent counterparty as top 95% of credit valuation adjustment (CVA):** The Federal Reserve is proposing to "clarify that if a consolidated or parent counterparty is selected as top 95% of CVA, then a firm's exposures to all the counterparties and legal entities associated with the consolidated/parent counterparty must be included and reported in Schedule L.1 (Derivatives profile by counterparty and aggregate across all counterparties), rather than including only counterparties and legal entities with which the firm has a CVA."[15] This proposed clarification would potentially contradict the guidance provided in FAQ Y140001356 with regard to the reporting of legal entities within the consolidated or parent counterparty, which specifies that "[f]or purposes of reporting exposures across sub-schedules L.1-L.5, firms are not required to include the active agreements that do not have actual trades on the as-of reporting date."[16] Therefore, under current practice even if the consolidated or parent counterparty is in the top 95% of CVA, if a firm does not have actual trades on the reporting date with a counterparty legal entity associated with the parent, then that counterparty legal entity is excluded from sub-schedules L.1.-L.5. In light of this potential contradiction, we recommend that the Federal Reserve clarify the reporting instructions so that firms are not required to report legal entities within the consolidated/parent counterparty which is in the top 95% of CVA, even if the firm does not have actual trades, consistent with FAQ Y140001356.

b. **Agreement Role:** The current reporting instructions for "Agreement Role" note that firms should report "NA" "when the respondent's transactions do not relate to centrally cleared or exchange traded derivatives; the reported counterparty is a CCP, or the respondent is a clearing member of a CCP or an exchange and it does not guarantee the client's performance to the CCP or exchange."[17] We recommend that firms report the central clearing counterparty (CCP) in client-cleared derivatives activities with the agreement role "Principal" rather than "NA" in the Agreement Role MDRM in sub-schedule L.5.1 for back-to-back derivatives. This approach would enable the Federal

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14 *See* Board of Governors of the Federal Reserve System, *Draft instructions for the Capital Assessments and Stress Testing Reports (reporting Form FR Y-14Q)* (Modified February 2022) at page 71, *available at* https://www.federalreserve.gov/reportforms/formsreview/FR_Y-14Q_Instructions_draft%202022.pdf..

15 87 Fed. Reg. 11432 at 11437.

16 Board of Governors of the Federal Reserve System *FR Y-14 Information Collective Q&As* (Last Update: March 04, 2022), *available at* https://www.federalreserve.gov/publications/fr-y-14-qas/fr-y-14-qas-fr-y-14q.htm.

17 Id at page 299.

Reserve to delineate such exposures from the firm's exposures to the CCP arising from transactions, which firms enter into as a principal in house derivatives, and to potentially remove as an input to any calculation of stress loss.

c. **Reporting of guarantees provided in sponsored repo program:** The proposal would revise the general instructions for Schedule L.5 to clarify that firms must also include securities financing transaction (SFT) exposures that arise in situations in which the firm is acting on behalf of a client as agent for which lender indemnification or credit guarantee has been provided against the borrower's default. However, neither the proposal nor the draft instructions address whether firms are required to report guarantees provided in sponsored repo program in which the firm, as a sponsoring member, guarantees the performance of the clients to CCPs. Certain firms received bilateral instructions from the Federal Reserve Board's Supervisory and Modelling team (SMT) to report in Schedule L.5.1 firm-provided guarantee of the client's performance in the sponsored repo program. Some firms view the guarantee provided in the sponsored repo program as completely different in form and substance from the SFT lender indemnification business, which are risk managed differently and should not be considered interchangeable. Therefore, the reference in the current instructions to agent lender indemnification is not applicable to the guarantee provided in the sponsored repo program. We therefore request that the Federal Reserve update the instructions to clarify how the guarantee provided in sponsored repo program should be reported in Schedule L. The sponsored repo program is widely offered in the industry, and reporting practice may not be consistent based on interpretation of the current Schedule L instructions.

d. **Unstressed Mark-to-Market Received:** The proposal would revise the "Unstressed Mark-to-Market Received (SFTs)" and "Stressed Mark-to-Market Received (SFTs)" items of Schedule L.5.1 to specify that in cases where the close-out netting is not enforceable, firms must report zero. However, guidance is needed with respect to the treatment of Net Current CE and Mark-to-Market (MtM) Received for SFT transactions in the case of either unenforceable netting agreements (such as Master Repurchase Agreements (MRA) or Master Securities Loan Agreements (MSLA)) or no netting agreement in place, in light of the responses for CCAR FAQ 1492 and FAQ 1386. Specifically, firms require further clarification around allowing posted and received collateral to offset one another on the same transaction versus allowing different transactions to net with one another.

   In the case of an unenforceable agreement or where no agreement is in place, each transaction becomes its own netting set. Economically, the MtM of the transaction is the difference between the posted and the received amounts. The Net CE of the transaction is the MtM of the transaction floored at zero. Across an unenforceable agreement, the total Net CE is the sum of all the trade level Net CEs. Meanwhile, MtM Received represents the aggregate amount received for each transaction that is in the money in order to accurately tie back to Net CE. The response to FAQ 1492 appears to be consistent with firms' understanding above, while FAQ 1386 appears to be contradictory. FAQ 1386 states that "[i]n cases where close-out netting is not enforceable so that SFT MtM Received cannot be netted against the amount of SFT MtM posted when computing the net current exposure, a firm must report zero for SFT MtM Received." Ignoring the received leg on an individual SFT transaction would result in the MtM only representing the posted amount, causing a significant inflation of transaction MtM and ultimately Net CE. This does not make economic sense for a transaction. As a corollary, take a simple Pay Fixed / Received Float interest rate swap. One would never consider the MTM of the interest rate swap to only be the MTM of one leg regardless of agreement enforceability before calculating Net CE. Instead, firms believe that MTM Received should only be zero when the MTM of the transaction is out of the money.

e. **SFTs in Net CE Column**: In the Counterparty Exposure Universe section of the draft reporting instructions for Sub-Schedules L.1-L.4, it states that "[f]or regular/unstressed submissions, counterparty exposures on sub-schedules L.1-L.4 should be limited to transactions for which the firm computes CVA for its public financial statement reporting under generally accepted accounting principles (GAAP) or applicable standard."[18] Based on this instruction, it seems that firms do not report SFTs in sub-schedules L.1-L.4 as they do not compute CVA for SFTs in public financial statement reporting. However, the draft instructions for Net CE (CACVM912) in sub-schedule L.1 state that "[n]et CE should be reported for both derivatives and fair-valued SFTs"[19] which implies that firms should be reporting SFTs in sub-schedule L.1 under this column. Can the Federal Reserve clarify if firms need to include SFTs in sub-schedule L.1 under the Net CE column?

f. **Non-Cash Collateral:** The Federal Reserve is proposing to revise the reporting instructions in Schedule L.5.1 for Non-Cash Collateral Type to require firms to include "all non-cash collateral or initial margin that were either posted or received in actuality"[20] as opposed to only those allowed under a given agreement. Given this proposed change in instructions, can the Federal Reserve confirm that firms should leave this item blank for legally unenforceable agreements and in cases where no agreement is in place?

g. **Counterparty Identification:** The proposal would require firms to report counterparty attribute information at the consolidated/parent level in addition to the counterparty legal entity level. The draft reporting instructions state that firms should "[r]eport the four to six digit numeric code that describes the primary business activity of the consolidated/parent counterparty reported in the Consolidated/Parent Counterparty Name column, according to the NAICS. Six digit code required for all financial counterparties." [21]

   i. Some firms underwrite limits and assign ratings/grades at the counterparty legal entity level. A parent counterparty entity would only receive a grade or rating if the firm had transactions with that entity directly. The Federal Reserve should clarify the desired approach in a situation where a parent counterparty is not rated/graded internally. There are two potential approaches. 1. Assigning

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18 Board of Governors of the Federal Reserve System, *Draft instructions for the Capital Assessments and Stress Testing Reports (reporting Form FR Y-14Q)* (Modified February 2022) at page 273, *available at* https://www.federalreserve.gov/reportforms/formsreview/FR_Y-14Q_Instructions_draft%202022.pdf.

19 Id at page 278.

20 Id at page 299.

21 Id at page 286.

default grades (this would result in a large number of BB- grades reported). 2. Use mean or median across counterparty legal entities to form the composite rating (this information is already available to the Board and the field may be redundant).

ii. Can the Federal Reserve clarify if the primary business activity of the parent company should be determined by looking at the contributions of revenue across subsidiaries or whether parent entities should be aligned to holding company NAICS codes? For instance, in the case of a bank holding company, the appropriate NAICS code for the parent entity may be 5511 (Management of Companies and Enterprise - a non-financial NAICS for holding companies) or 522110 (Commercial Banking) if it is receiving its largest revenues from a subsidiary that is a commercial bank.

FR Y-14M:

1. **Schedule A:**

   a. **Removal of Items from Schedule A:** The proposal would remove a number of items, such as Line 81 – Capitalization and Line 98 – Interest Rate Reduced, from Schedule A as the Federal Reserve has deemed that they "are no longer needed."[22] These two items (item 57 and item 71) should also be removed from Schedule B of the FR Y-14M for consistency.

   b. **Updated descriptions of Items:** The Federal Reserve is proposing to revise the descriptions of Item 87 – Principal Deferred Amount (now Deferred Amount) and Item 89 - Principal Write-Down Amount in Schedule A, specifically to remove language that states that "[t]his line item should only be populated for loans with a value in Line item 74 Modification Type indicating that a loan has been modified."[23] However, the instructions for Line items 59 and 73 in Schedule B, which also relate to Principal Deferred and Principal Write-Down, continue to include language that states "[t]his line item should only be populated for loans with a value in Line item 77 Modification Type indicating that a loan has been modified."[24] While these items in Schedule A require respondents to report values and the items in Schedule B require a "yes" or "no" response, we recommend that this language referencing Modification Type also be removed from the instructions for line items 59 and 73 in Schedule B to be consistent with those proposed changes to line items 87 and 89 in Schedule A.

   c. **Line 74 – Modification Type:**

      i. The instructions for Line 77 Workout Type Completed state that the field is to be populated "for any loan where a loss mitigation effort has been successfully completed in the current month" and for Workout Type Completed of 1, "populate in the month that the modification is completed and the new loan

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22 87 Fed. Reg. 11432 at 11435.

23 Board of Governors of the Federal Reserve System, *Draft instructions for the Capital Assessments and Stress Testing Reports (reporting Form FR Y-14M)* (Modified February 2022) at page 66, *available at* https://www.federalreserve.gov/reportforms/formsreview/FR_Y-14M_Instructions_draft%202022.pdf.

24 Id at page 125.

terms are in effect."[25] If firms are only populating Line 74 dependent on Line 77, which is populated only once in the month the workout was completed, the instructions seem to be contradictory. Clarification from the Federal Reserve is needed. Does this mean that modification related data is only reported in the month that Workout Type is reported as 1?

ii. The instructions for Line 74 state that "[t]his field will be filled out if Line 77 - Workout Type Completed = 1 (Modification)."[26] The instructions also have a value '0 = Loan has not been modified.' These two portions of the instructions seem to contradict one another. Clarification is need as to when this allowed value would be utilized.

iii. How should COVID related deferral or forbearance plans be reported? Should they be considered as Modifications? Please note the interagency statement released in April 2020 states COVID related deferral or forbearance plans should not be treated as Modifications as these are temporary plans to reduce the hardships faced by the borrower.[27] These plans are currently reported in Loss mitigation performance status (Line 85) while the plan is active and reported in Workout type completed (Line 77) when the plan is completed. We recommend that firms populate Line 74 only in cases where the modification is due to loss mitigation efforts. If the modification is not due to loss mitigation or temporary relief provided due to specific circumstances, do not report them as Modifications.

iv. Past FAQ guidance from the Federal Reserve has instructed firms to report Non-Loss Mitigation related modifications plans (non-default) (i.e., SCRA, HERE, and Non-Conforming Rate Modifications) in Line 74 (Line 77 in Schedule B.1). Specifically, FAQ Y140001307 notes that "borrowers covered under SCRA plan should be considered as active Loss Mitigation. In Schedule A, if the loan was active and performing prior to entering loss mitigation plan, use the Loss Mitigation Performance Status field (line item 85) '1= active and performing'. However, if the loan was active and non-performing prior to entering loan mitigation plan, use the Loss Mitigation Performance Status field (Line 85) '2= active and nonperforming'." Additionally, in FAQ Y140001428, the Federal Reserve states that "firms should report the rate reduction modification in the line item #74 Modification Type." Finally, in FAQ Y140000738, the Federal Reserve states that a Home Equity modification program should be reported "with Modification Type (HE Field 77) as '9 = Proprietary Other.'"[28] How should

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25 Id at page 60.

26 Id at page 55.

27 *See* Board of Governors of the Federal Reserve System Federal Deposit Insurance Corporation National Credit Union Administration Office of the Comptroller of the Currency Consumer Financial Protection Bureau, *Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised)* (April 7, 2020), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200407a1.pdf.

28 Board of Governors of the Federal Reserve System *FR Y-14 Information Collective Q&As* (Last Update: March 04, 2022), *available at* https://www.federalreserve.gov/publications/fr-y-14-qas/fr-y-14-qas-fr-y-14m.htm.

these Non-Loss Mitigation related modifications plans (non-default) be reported using the new code values?

v. How should firms report line item 74 when the specific type(s) of modification provided in a modified loan is unknown? For example, a loan that was modified under a Home Affordable Modification program (HAMP) may have offered the borrower a variety of types of modification (i.e., Principal deferral + Rate Reduction/ Rate Frozen, Principal deferral + Term extension etc.). However, this level of detail is not available in certain loan systems specially for loans that were modified prior to 2013. In the above example, since the value "12 = Home Affordable Modification" is proposed to be retired, clarification is needed on whether firms should select "99 = Other" for modified loans where the specific type (s) of modifications, available in the new proposed values 21-34, is unknown.

vi. Generally, when accrued and/or deferred principal, interest, escrow, advances, fees etc. are added to the unpaid principal balance of a loan, these amounts are considered to be capitalized. We request that the Federal Reserve clarify if the definition of the term "Recapitalization" used in the proposed new allowable value "25=Recapitalization" is consistent with the industry's understanding of capitalization as described above. If not, we request that the Federal Reserve provide a definition for "Recapitalization".

d. **Line 77 Workout Type Completed:**

i. Clarification is needed on when the new value 17 = Partial Claim/Junior Lien" should be selected in Line 77. Certain modifications may result in a partial claim. For example, an FHA-HAMP Combination Loan Modification and Partial Claim, which establishes an affordable monthly payment, resolves the outstanding mortgage payment arrearages, and permanently modifies the first mortgage monthly payment. The Partial Claim is a zero-interest subordinate lien that will include a portion of the amount to be resolved and if you meet the requirements, a principal deferment. The remainder is added to the principal loan balance of your first mortgage and extends the term for 30 years (360 months) at a fixed interest rate. In such cases, please clarify if the loan should be classified as "1 = Modification", "17 = Partial Claim/Junior Lien or "12 = Other"?

e. **Line 142 Actual Payment Amount**:

i. If there is an additional principal curtailment received with the payment, do firms report principal, interest, and the additional principal curtailment in Line 142? If there are multiple payments received in the reporting month, do firms report the total of all payments?

ii. The draft reporting instructions for Line 142 state that firms should "[r]eport the actual dollar amount of the principal and interest payment received in the reporting month. Do not include fee payments."[29] Should Principal and interest (P&I) payment reversals be factored into Line 142 or just P&I received?

f. **Line 143 Workout Type Started**:

i. If a plan is reported in the prior period and fails in the current reporting month (example Repayment Plan) and a new plan starts in same reporting period (example Modification) what should be reflected in the current reporting period in Line 143 as the instructions state it "should be coded in the reporting month when the workout type was started and in subsequent months up to, but not including, the month the workout type was completed"?[30]

ii. Firms may offer a borrower a trial period for a modified loan that could subsequently result in a modification workout program. Clarification is needed on whether the workout type date to determine whether a workout type has started should be when the trial period began or when the modification workout program began. This will also help clarify on whether trial modifications should be treated as the start of loss mitigation efforts. The draft instructions for Line 61 do not include detailed descriptions for the following allowed values, "10 = MI Claim Advance," "12 = Other," 16 = Refinance," and "17 = Partial Claim/Junior Lien." Can the Federal Reserve provide further details for these allowed values?

2. **Schedule A& Schedule B:**

a. **Schedule A.1 Line 32 & Schedule B.1 Line 29 – ARM Index:**

i. The Federal Home Loan Bank of San Francisco announced that it will stop publishing all Cost of Funds Indices (COFI) in early 2022.[31] This includes both monthly and semiannual weighted average COFI. As a result, loan terms have been updated to reference other indices (i.e., FHLMC rate (COFR), CMT (M1YT) etc.). Should firms continue to report these loans as indexed to the COFI (the index at origination) or report the updated index?

ii. The instructions for the ARM Index Line item states that "[a]ll of the ARM interest rate and payment variables should be populated with the origination values."[32] We recommend that the instructions for this line item be revised to require firms to report current index values, which we believe would provide more useful information and would be less burdensome to populate as this information as already tracked in loan systems.

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29 Board of Governors of the Federal Reserve System, *Draft instructions for the Capital Assessments and Stress Testing Reports (reporting Form FR Y-14M)* (Modified February 2022) at page 94, *available at* https://www.federalreserve.gov/reportforms/formsreview/FR_Y-14M_Instructions_draft%202022.pdf.

30 Id.

31 *See* FHLBank San Francisco, *COFI: Frequently Asked Questions*, available at https://www.fhlbsf.com/resources/cofi/faq.

32 Board of Governors of the Federal Reserve System, *Draft instructions for the Capital Assessments and Stress Testing Reports (reporting Form FR Y-14M)* (Modified February 2022) at page 112, *available at* https://www.federalreserve.gov/reportforms/formsreview/FR_Y-14M_Instructions_draft%202022.pdf.

b. **Schedule A.1 Line 74 & Schedule B.1 Line 77 – Modification Type:**

   i. The proposal would retire all of the existing allowed values for Line 74 of Schedule A and Line 77 of Schedule B. How will historical reporting be updated or aligned to new specified allowed values?

3. **Schedule B:**

   a. **Line 61 Workout Type Completed:**

      i. The draft instructions for Line 61 do not include detailed descriptions for the following allowed values, "9 = Forbearance Plan," "16 = Refinance," and "17 = Partial Claim/Junior Lien." Can the Federal Reserve provide further details for these allowed values?

   b. **Line 77 Modification Type:**

      i. The new code values for Line 77 need clarification. Specifically, what is the difference between "26 = Other" and "99 = Other"?

      ii. Which allowed value should banks use after "9=Proprietary Other" Line 77 in Schedule B.1 is retired? Currently, banks are permitted to use Option 9 on Schedule B.1 to report home equity modifications and Option 11 in the Modification Type field (Field 74) on Schedule A.1, per FAQ Y140000738, which instructs firms to report "a Home Equity modification program that does not fit the FRB definition for Modification Type (HE Field 77 M215) in Line 77 as '9—Proprietary Other.'"[33]

      iii. In Line 77 are allowed values "13= HELOC Line Renewal (Regular)" and "14 = HELOC Line Renewal (loss mitigation strategy)" retired? The descriptions for these allowed values have been stricken in the draft reporting instructions but the values remain.

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33 Board of Governors of the Federal Reserve System *FR Y-14 Information Collective Q&As* (Last Update: March 04, 2022), *available at* https://www.federalreserve.gov/reportforms/formsreview/FR_Y-14M_Instructions_draft%202022.pdf.

Appendix B

BANK POLICY INSTITUTE

March 27, 2020

Via Electronic Mail

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Reporting of Certain Credit Facilities in the FR Y-9C

Ladies and Gentlemen:

The Bank Policy Institute[1] appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System regarding the potential reporting of credit facilities in the FR Y-9C that are structured and documented so that the lender is not under any legal obligation to extend credit or purchase assets ("Defined Facilities"). Currently, we believe there is a divergence in practice with respect to the reporting of this population of Defined Facilities in the FR Y-9C. We respectfully submit that (i) the Defined Facilities should not be reported as "unused commitments" on the FR Y-9C and ask that the Federal Reserve confirm such determination and (ii) if the Federal Reserve intends that such facilities be reported, a new line item or memo item should be added to the FR Y-9C after a public notice and comment period.

I. Defined Facilities: an overview

From a legal perspective, the critical common element across any type of Defined Facility is that the potential lender has no legal obligation to extend credit. While a Defined Facility may include a legally binding agreement between the potential lender and a potential borrower, the existence of such an agreement does not necessarily entail any obligation on the part of the potential lender to extend credit to such potential borrower. Rather, what is agreed to between the parties in connection with a Defined Facility are the terms that would be applicable,[2] if and only if, the potential lender elects, in its sole discretion, to extend credit subject to those terms to the potential borrower.

From an economic perspective, in a distressed credit situation, Defined Facilities pose meaningfully less risk to a lender than unused commitments (i.e., those credit facilities under which the lender is subject to a legally binding obligation to extend credit or purchase assets). For example, assume a lender has provided a credit facility to a borrower and the credit quality of the borrower has since declined to the point that the lender is concerned about

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

[2] Some Defined Facility agreements have conditions precedent akin to those in unused commitments, but unlike unused commitments the borrower's ability to meet those conditions for a Defined Facility does not result in the lender becoming obligated to lend.

increasing its exposure to the borrower (this is often the most immediate concern). With a Defined Facility, since the lender has no legal obligation to extend credit, the lender can decline to fund any new request to draw on the facility. With an unused commitment, in contrast, the lender is required to continue to fund draws on the facility unless the lender can establish that the borrower has breached one or more of the applicable funding requirements in the facility agreement (e.g., maintenance of certain financial ratios, absence of defaults). While such funding requirements do help protect a lender in an unused commitment, their effect is necessarily limited, both because it is often not possible to identify on an ex ante basis for every scenario when it would be prudent not to extend credit (nor would it be feasible to negotiate such flexibility into an unused commitment credit agreement)[3] and because certain risks may manifest themselves in advance of any specific requirements being breached. Consequently, the general discretion afforded to a lender under a Defined Facility gives a lender much greater flexibility to decline to extend credit than under an unused commitment.[4]

II. Defined Facilities should not be reported as "unused commitments" in the FR Y-9C.

Under the current instructions for the FR Y-9C effective December 2019, a bank holding company is required to report the balance of "unused commitments" in Line 1, Unused commitments.[5] Unused commitments are defined in several regulatory reports and rules. Relevant reports include the FR Y-9C, FR Y-14Q, and Call Report; relevant rules include the Capital Rules[6] and Liquidity Rules.[7] Unused commitments are also defined in the Accounting Standards Codification.[8]

The Capital Rules, Liquidity Rules and Accounting Standards define "unused commitments" as legally binding arrangements that obligate a reporting institution to extend credit or purchase assets. The critical common element across these definitions is that the potential lender has a legal obligation to extend credit. These arrangements typically are evidenced by credit agreements with language that obligates the bank to extend credit.

Given the fundamental differences between Defined Facilities and unused commitments, we do not believe that Defined Facilities should be reported in the FR Y-9C as "unused commitments." As described above, a lender's legal and economic risk associated with a Defined Facility is meaningfully less than with respect to an unused commitment. Reporting Defined Facilities as "unused commitments" would obscure these important differences between these types of facilities. As a consequence, the information reported on the FR Y-9C would present a less accurate representation of a bank holding company's financial condition—thereby impeding the purpose of the FR Y-9C to provide information to the Federal Reserve and other stakeholders "to assess and monitor the financial condition of holding company organizations."[9] We therefore respectfully request that the Federal Reserve confirm that Defined Facilities should not in fact be reported as "unused commitments." However, if the Federal Reserve does not agree and determines that Defined Facilities should be reported in the FR Y-9C, we recommend that these facilities be reported in a new line item or memorandum item. Reporting Defined Facilities in a new line item or

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3 Many unused commitments agreements attempt to address these risks with a "material adverse change" clause. In these cases, unless a given deteriorating credit situation clearly qualifies as a "material adverse change", the lender may not be able to refuse to continue to lend without taking a significant litigation risk (i.e., of violating its contractual obligations). By contrast, in a Defined Facility, the lender is not required to make any such contractual determination.

4 This flexibility is recognized in many lenders' resolution or recovery plans where a meaningful reduction in the lender's loan book is an element of the plan.

5 While the FR Y-9C instructions provide *examples* of facilities that should be reported as "unused commitments," the terms "unused commitments" and "commitment" are not specifically *defined*. As a result, BPI understands that there may be a diversity of practices amongst bank holding companies in respect of the types of facilities that are reported as "unused commitments."

6 *See* 12 CFR Part 217 (Federal Reserve); 12 CFR Part 3 (OCC); and 12 CFR Part 324 (FDIC).

7 *See* 12 CFR Part 249 (Federal Reserve); 12 CFR Part 50 (OCC); and 12 CFR Part 329 (FDIC).

8 *See* ASC 815 and ASC 326.

9 https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDal8cbqnRxZRg==.

memorandum item would mitigate potential unintended consequences of requiring these facilities to be reported on the FR Y-9C and make clear that these facilities are not unused commitments and do not otherwise impose any legally binding obligation on the filer to extend credit, purchase assets, or otherwise pay funds.

III. If the Federal Reserve intends that the reporting of Defined Facilities in the FR Y-9C is required, there are possible unintended consequences.

Reporting Defined Facilities in the FR Y-9C, particularly if these facilities are reported as "unused commitments," could have unintended implications to the bank holding companies' other publicly available financial reports such as Forms 10K/10Q. Under U.S. GAAP, the bank holding companies are required to provide disclosures in the footnotes on lending related commitments and guarantees. The unused lending related commitments are defined as "legally binding commitments to extend credit to a counterparty under certain prespecified terms and conditions."[10] Defined Facilities are not generally disclosed in such footnotes due to the different characteristics indicated above. Reporting unused commitments and Defined Facilities together as "unused commitments" in the FR Y-9C may cause confusion to the users of the bank holding companies' financial information and distort the current transparency in these publicly available financial reports.

Additionally, reporting Defined Facilities as "unused commitments" in the FR Y-9C could have many reporting and financial effects beyond the FR Y-9C if the Federal Reserve does not take the approach of creating a separate line item or memorandum item for such facilities, which in turn could also create an additional source of inconsistency across reporting practices. For example —

- Filers are generally required to report in Schedule H of Form FR Y-14Q any "unused commitments" reported in the FR Y-9C, which could ultimately lead to an overcalculation of an institution's stressed losses, despite the fact that Defined Facilities are not required to be funded.
- Filers are generally required to report commitments and other off-balance-sheet exposures in Schedule A of the FR Y-15. In addition, commitments to financial institutions reported on Line 1 of Schedule HC-L of the FR Y-9C are generally required to be reported in Schedule B of the FR Y-15. This could ultimately inflate FR Y-15 reporting and thus potentially affect GSIB surcharge calculations.
- While we believe the Federal Reserve generally intends for the FR Y-9C and Call Report requirements to align, items reported in Line 1 of Schedule RC-L of the Call Report, however, may have an effect on amounts reported in Schedule RC-O and, therefore, a bank's deposit insurance assessment charges.
- The Federal Reserve's regulatory capital rules require that risk-weighted assets and leverage exposure amounts be calculated in respect of off-balance sheet exposures, including commitments.

In light of the aforementioned potential consequences and the current divergence in practice with respect to the reporting of Defined Facilities, if the Federal Reserve determines to require the reporting of these facilities in the FR Y-9C, we respectfully submit that such a requirement should be subject to the public notice and comment process. A notice and comment process is of particular importance in this instance as such a requirement would

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[10] U.S. GAAP defines loan commitments in the glossary section of the Accounting Standards Codification. See 326-20-20 Financial Instruments – Credit Losses.

constitute a new "collection of information," as defined in the Paperwork Reduction Act ("PRA")[11] and therefore should be subject to the PRA's notice-and-comment requirements for "collection[s] of information."[12]

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If you have any questions, please contact the undersigned by phone at 646.736.3943 or by email at Alix.Roberts@bpi.com.

Respectfully submitted,

Alix Roberts
Assistant Vice President, Regulatory Affairs
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Cc: Michael Gibson
Mark Van Der Weide
Board of Governors of the Federal Reserve System

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11 44 U.S.C. § 3502(3).

12 Id. at § 3506(c)(2), 3507(a).