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Submitted Via E-Mail

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Re: Proposed Agency Information Collection Activities; Comment Request; 73 Federal Register 54807; September 23, 2008; Consolidated Reports of Condition and Income, **OCC:** 1557-0081; **FRB:** 7100-0036; **FDIC:** 3064-0052

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the proposed amendments to the Consolidated Reports of Condition and Income (Call Report),² as issued by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, the “Agencies”). The Agencies’ proposed changes to the Call Report are numerous, significant, and include new items that focus on areas in which the banking Agencies believe the industry is facing heightened risk as a

¹The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation’s banking industry and strengthen America’s economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry’s \$13.3 trillion in assets and employ more than two million men and women.

² 73 Fed. Reg. 54807 (September 23, 2008).

result of market turmoil, illiquidity, and weakening economic and credit conditions. The proposed changes would be phased in during 2009 to support better the Agencies' surveillance and supervision of banks and enhance the Agencies' monitoring of the industry's condition and performance.

The ABA believes the proposed revisions to the Call Report in this Request for Comment would provide additional information that would be useful to the Agencies to assess risk. On balance, we generally agree with the proposed changes and urge the Agencies to consider including in the final revisions to the Call Report the several changes suggested below.

Areas in which we believe revisions to the Call Reports could most benefit from changes are as follows:

- **Reciprocal Deposits**: The ABA recommends creating a separate line item for reciprocal deposits on the Call Report Schedule RC-E, Part I, Memoranda, Item 1, to separate them from brokered deposits. Reciprocal deposits are less risky than brokered deposits, and differentiating reciprocal deposits will allow the Agencies to monitor this deposit funding source closely.
- **Sweep Accounts**: The ABA will make more detailed comments on the treatment of sweep accounts, including deposits swept into a depository institution from affiliated institutions, when it comments on the FDIC Notice of Proposed Rulemaking on FDIC Assessments.³ However, at this time, we note that provisions of the Call Reports, especially Schedule RC-E, Part I, Memoranda, Item 1, and the related Instructions and Glossary for completing the Call Report, will need to be revised if the FDIC agrees that these deposits should be distinguished from more traditional brokered deposits.
- **Confidential Treatment**: The ABA recommends that the current confidential treatment for fiduciary income, expense, and loss data be retained. The ABA feels there are significant competitive concerns with the proposal to eliminate the current confidential treatment, and the needs of market participants can continue to be satisfied with a financial institution's audited financial statements.

These points, as well as additional suggestions for improving the revisions to the Call Reports, are set forth below.

Discussion

Non-fiduciary Issues:

Loans and Leases Acquired in Business Combinations.

The Agencies propose Call Report revisions that would take effect as of March 31, 2009, including new items in response to the revised accounting standard of FAS 141(R), that would

³ 73 *Fed. Reg.* 61560 (October 16, 2008).

provide information on held-for-investment loans and leases acquired in business combinations. Specifically, the Agencies request comment on the merits and availability of the new post-acquisition loan and lease data that are being considered for possible addition to the Call Report to reflect the acquisition date disclosures required by FAS 141(R) for categories of acquired held-for-investment loans and leases, and the period of time after a business combination that this information should be reported.

If this additional information is included in the Call Report, we recommend that the time period to report it should be through the end of the calendar year of the acquisition. This reporting time period is one of the options proposed by the Agencies for reporting the new information. The ABA's support for this reporting time period reflects our agreement with the Agencies' stated recognition in the Request for Comment that:

[T]he agencies recognize that information about acquired loans and leases and related allowances will become less useful from an analytical standpoint with the passage of time after a business combination.

The ABA believes that a reporting period that expires at the end of the calendar year of the acquisition would yield the most meaningful data.

Clarification of Instructions for Unused Commitments.

The Agencies propose a clarification of the instructions for reporting unused commitments in Schedule RC-L, Item 1, effective March 31, 2009, to address the issue where a bank has not reported commitments that it has entered into until it has signed the loan agreement for the financing that it has committed to provide. The agencies consider these arrangements to be within the scope of existing instructions for reporting commitments in Schedule RC-L. Thus, to clarify the instructions, the Agencies propose to revise the instructions for Schedule RC-L, Item 1, "Unused commitments" to read:

Report in the appropriate subitem the unused portions of commitments. Unused commitments are to be reported gross, i.e., include in the appropriate subitem the amounts of commitments acquired from and conveyed to others.

Further, the proposal also states that for purposes of this item, commitments include, "(6) Commitments to issue a commitment at some point in the future, including commitments that have been entered into, even though the related loan agreement has not yet been signed."⁴

If this revision is included in the instructions, the ABA recommends the inclusion of the following instruction as well:

Banks would report in this item, commitment letters with an expiration date of greater than 90 days.

⁴ See 73 *Fed. Reg.* 54811, Column 3 (September 23, 2008).

Some banks do not have systems that track unused commitments on loans that are not yet booked. The clarification suggested above would strike an appropriate balance between the need for additional information and burden on banks by avoiding the need to track unused short-term commitments.

Maturity Distributions of Unsecured Other Borrowings and Subordinated Debt.

The Agencies state that the Call Report currently lacks information on remaining maturities of unsecured “other borrowings” and subordinated notes and debentures. Thus, the Agencies propose that banks would report separate maturity distributions for “other borrowings” (as defined for Schedule RC-M, item 5.b) that are unsecured and for subordinated notes and debentures (as defined for Schedule RC, item 19) in Schedule RC-O, Other Data for Deposit Insurance and FICO Assessments. The Agencies also propose that the maturity distributions would include maturities broken out for one year or less, over one year through 3 years, over three years through 5 years, and over five years.

The ABA supports this proposed collection of information. It would enable the FDIC to implement an adjustment to the risk-based assessment system so that insured depository institutions with greater amounts of general unsecured long-term liabilities will be rewarded with a lower assessment rate. We believe this additional reporting would be reasonable and would not be unduly burdensome.

In addition to the recommended changes noted above to the Agencies’ NPR, we offer the following recommended revisions for additional changes to the Call Report.

Reporting of reciprocal deposits on Call Report Schedule RC-E, Part I, Memoranda, Item 1.

The ABA recommends that the Call Report be amended to break out “reciprocal” deposits in a separate line item from brokered deposits that are currently reported on Schedule RC-E, Part I, Memoranda, Item 1. A reciprocal deposit is obtained when an insured depository institution exchanges funds, dollar-for-dollar, with members of a network of other insured depository institutions, where each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members, and all funds placed through the network are fully insured by the FDIC. Such an arrangement enables a member of the network to offer its customers a convenient means to obtain access to FDIC insurance on large deposits by working solely with the bank with whom the customer has a relationship. As a result, the bank is able to accept the large deposits without having to post collateral, which in turn makes more funds available to meet the credit needs of the bank’s community.

Reciprocal deposits have less interest rate risk and are less volatile since they generally come from the financial institution’s current customer base or market franchise territory. With reciprocal deposits, the financial institution deals directly with the customer; in contrast, a financial institution typically has no direct contact with the owners of a brokered deposit that is obtained via a third party intermediary. Customers use reciprocal transactions to obtain higher deposit insurance, but with the institution with which they already have a relationship. As a result, the reciprocal deposits tend to be “stickier” than classic “hot money” brokered deposits.

There currently is no distinction drawn in the Call Report between different types of brokered deposits. This causes all deposits obtained with the assistance of an intermediary, regardless of how stable and “core-like” the deposit is, to be lumped together. This works to the disadvantage of both the reporting bank and the bank’s regulator. Banks often shy away from “brokered deposits,” in part to avoid any suggestion that it, like several banks that have failed recently, is dependent on a volatile source of funding. Thus, many banks pass on what may be in actual practice relatively stable funding sources. The bank regulator is disadvantaged by the current system, because it has just one number – total brokered deposits – to analyze when trying to ascertain the genuine liquidity position of a bank. Given how many different sources of deposits are included within the category of “brokered,” there is a lot of “noise” in the data that obscures a bank’s actual liquidity position.

To avoid these problems, we recommend that the agencies amend the Call Report to distinguish reciprocal deposits from other types of brokered deposits. This would provide the Agencies more granularity to differentiate specific types of deposits, and a more precise reporting of reciprocal deposits so the Agencies can better monitor this form of a bank’s funding activities.

One option to achieve this goal would be to revise FFIEC 031 Schedule RC-E – Deposit Liabilities, Part I, Memoranda, Item 1, to break out and report reciprocal deposits separately from Total Brokered Deposits (currently in Memorandum line 1.b.) as follows:

- Create a new line 1.b. for “Total reciprocal deposits”.
- Renumber current line 1.b. to line 1.c. and revise to read: “Total brokered deposits (Do not report Reciprocal deposits here)”.
- Renumber the current lines 1.c., 1.d., and 1.e. to 1.d, 1.e, and 1.f., respectively, to make conforming changes for the addition of new line 1.b. as mentioned above.
- Revise current line 1.c., which would be renumbered to 1.d., to read “Fully insured brokered deposits (included in Memorandum item 1.c above)”.
- Revise current line 1.c.(1), which would be renumbered to line 1.d.(1), to read “Brokered deposits issued in denominations of less than \$100,000”. We also suggest making a notation on the Call reports for this amount on each of these Memorandum lines to reflect the current temporary increase in FDIC insurance coverage of deposits.
- Revise current line 1.d.(1), which would be renumbered to line 1.e.(1), to read “Brokered deposits issued in denominations of less than \$100,000 with a remaining maturity of one year or less (included in Memorandum item 1.d.(1) above)”.
- Include in the Glossary to the Instructions for Preparation of Consolidated Reports of Condition and Income (FFIEC 031 and 041) a definition of a reciprocal deposit. We recommend the following definition of a “reciprocal” deposit:

A reciprocal deposit is obtained when an insured depository institution exchanges funds, dollar-for-dollar, with members of a network of other insured depository institutions, where each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members, and all funds placed through the network are fully insured by the FDIC.

Similar conforming changes should also be made to FFIEC 041 Schedule RC-E - Deposit Liabilities.

Reporting of sweep accounts from other institutions, including affiliated institutions, into an insured depository institution, on Call Report Schedule RC-E, Part I.

The FDIC has requested comment on the treatment of deposits that consist of balances swept into an insured institution from another institution, such as balances swept from a brokerage affiliate, in its separate request for comment relating to Federal Deposit Insurance Corporation Assessments⁵. The ABA will comment further on the treatment of these sweep accounts in its comments on the assessment proposal. For purposes of the instant letter, it is sufficient to note that certain sweep products, such as those involving a transfer from affiliated institutions where the the financial institution knows the identity of the customer, yield safer and more stable deposits than other forms of brokered deposits. Consequently, these deposits in the depository institution would present less risk to the Deposit Insurance Fund. The ABA notes further that the resolution of the issue of how to treat sweep accounts for purposes of FDIC assessments may require conforming revisions to the Call Report and the related Instructions for Preparation of the Consolidated Reports of Condition and Income (FFIEC 031 and 041), including the Glossary.

Fiduciary Issues:

Schedule RC-T Changes

The Agencies propose to amend Schedule RC-T to provide more detail on fiduciary activities so as to improve their supervision and examination of banking institutions. In addition to eliminating confidential treatment for fiduciary income, expense, and loss data as of March 31, 2009, the Agencies propose to add a number of new reporting lines for certain types of accounts and investments. These new reporting items would be required for the December 31, 2009, Schedule RC-T filings.

Confidential Treatment Must Be Maintained.

Since first required in the Annual Report of Trust Assets, information on fiduciary income, expenses, and losses has been afforded confidential treatment. In the Federal Register notice for the proposal, the Agencies state that confidential treatment has been appropriate in the

⁵ 73 Fed. Reg. 61560, at 61565 – 61566 (October 16, 2008). The FDIC specifically notes that “[a]t present, it would be impossible to exclude these [swept] deposits, since institutions do not separately report them in the Call Report or TFR. Moreover, sweep programs may be structured so that swept balances are not brokered deposits. Nevertheless, the FDIC is particularly interested in comments on whether brokered deposits that consist of swept balances should be excluded from the ratio and, if so, how they should be excluded.”

past, because these data pertain to only a portion of the institution's operations. Even though the bank trust business has grown significantly since this reporting was first required, ABA believes this rationale still holds true and that these data must remain confidential.

There are significant competitive concerns with the proposal to eliminate confidential treatment. As ABA stressed in its letter to the Federal Financial Institutions Examination Council when the information collection was first proposed in 1995, "our members feel quite strongly that competitors, bank or otherwise, should not be able to obtain profitability information about a particular trust department."⁶ The public already has access to the number and types of fiduciary accounts, as well as the types of assets in those accounts. Making income, loss, and expense data publicly available may make it possible for competitors to deduce an institution's fee schedules. Many institutions closely guard these fee schedules as proprietary information.

The proposal states that "market participants" need access to this information to evaluate the financial condition of the institution. However, without a proper understanding of the scope of income, loss, and expense reporting in Schedule RC-T, market participants may misinterpret these data. The Financial Accounting Standards Board and the Sarbanes-Oxley Act require financial institutions to present their fiduciary income and expenses in their audited financial statements and annual reports differently from the instructions provide for Schedule RC-T. It would be extremely difficult to explain the different financial presentation between these reports to Schedule RC-T. The reporting across multiple banks in a holding company structure makes this issue that much more problematic. Ultimately, ABA believes that the needs of market participants can be satisfied with the institution's audited financial statements.

Market participants also may be confused or misled by the Schedule RC-T fiduciary expense and loss information, because they would be unable to determine the source of the reported amount. For example, an institution's net losses from fiduciary and related services could arise solely from its stock transfer agency department. Yet, because stock transfer agent services are reported with trust administration, the market participant could misconstrue the true situation at the bank. Disclosure of loss information made out of context may affect an institution's reputation and its recruitment and retention of fiduciary clients.

Modifications and Clarifications Needed for New Schedule RC-T Reporting.

ABA understands the need for the Agencies to have access to additional information about the banks under their supervision. Nonetheless, some of the new reporting needs to be clarified or modified to improve the reporting by our member institutions.

In the amended section, Fiduciary and Related Assets, the Agencies propose adding Item 13 to indicate the value of assets held in, as well as the number of, Individual Retirement Accounts, Health Savings Accounts (HSA), and other similar accounts. ABA would like clarification on the reporting of these accounts that are held outside of the trust department and in the retail side of the institution. In these circumstances, ABA recommends that these accounts

⁶ Letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association, to Joe Cleaver, Executive Secretary, FFIEC (August 29, 1995) (on file with the ABA).

be excluded from the new reporting line in Schedule RC-T. If these accounts were required to be reported on Schedule RC-T, the income reported in the next section, Fiduciary and Related Services Income, would not comport with the reported assets. This disparity in reporting would be misleading to the Agencies and examiners. ABA strongly urges such clarification on the scope of the reporting.

For reasons of simplicity, ABA also recommends that banks solely report IRAs, HSAs, and other similar accounts in a new Item 5.c. and define Item 5.d. as all other employee benefits and other retirement-related accounts. Under these changes, Line 13 would no longer be necessary and thus should be eliminated. Similarly, ABA recommends that the next section, Fiduciary and Related Income, mirror our recommended changes to the previous section.

ABA requests clarification about and certain modifications to the reporting in Memorandum 1, Managed Assets Held in Fiduciary Accounts.

1. What is the definition of “private equity investments” in Item 1.p? Does this term include investments in closely-held family businesses?
2. How does the bank report investments in common trust funds and collective investment funds in which the bank manages or administers the units of the vehicle and the underlying assets of the vehicle? Should both the accounts holding the units and the accounts holding the underlying assets be reported in the Fiduciary and Related Assets section? How can the banks avoid double counting this information?
3. For reasons of simplicity, ABA asks that Item 1.p, Investments in unregistered funds, be moved “above the line” so that it becomes a component of the total managed assets held in fiduciary accounts. Consequently, Item 1.k would be defined as all other common and preferred stock.

ABA member institutions have a number of suggested clarifications to the scope of the new reporting requirements for Memorandum 2, Corporate Trust and Agency Accounts.

1. “Substantive default” should be defined as an actual declaration of an Event of Default by the trustee with notice to investors. The Events of Default should include both technical and payment defaults.
2. “Amount outstanding” should mean unpaid principal balance or certificate balance.
3. Issues in a cure period should not be reported as “substantive defaults.”
4. Some private placement leases require the trustee to delay or waive the declaration of an Event of Default unless requested in writing. These issues should not be reported as “substantive defaults” until an Event of Default exists.

5. When trustee duties are completed with respect to a defaulted trust (i.e., remedies are exhausted, or plan of reorganization is confirmed and the only remaining activity is distribution of plan proceeds), the trust should no longer be reported under 2.a.(1).

ABA would also request further clarification of the meaning of the term “managed assets” as used throughout Schedule RC-T. Some of our member institutions are aware of inconsistent applications of the term by examiners and other institutions. For example, are discretionary accounts in which the management of the account or a portion of the account is delegated to a registered investment adviser, either affiliated and unaffiliated, still considered managed assets? We assume that non-discretionary accounts that are managed by a registered advisor would be reported as custody or non-managed accounts. We appreciate any further clarification in the Schedule RC-T instructions.

Additional Time Needed to Incorporate Schedule RC-T Changes.

The Agencies must provide more time for reporting institutions to make the appropriate changes to their systems. The process for making these changes is complex, requiring a detailed analysis of the needed system programming revisions, as well as system testing to ensure proper categorization of the newly reported items. Many of the vendors that provide the systems that track the data reported on the RC-T are extremely busy making changes to accommodate the Federal Reserve Board and Securities and Exchange Commission Regulation R. In addition, for purposes of the new reporting in Memorandum 2, some banks use multiple systems to track default status of issues. Implementation of a single system of record for regulatory reporting would require a significant financial commitment and an implementation period longer than the proposal allows. For all of the reasons stated above, at a minimum, the changes should not be effective until December 31, 2010.

Conclusion

The ABA appreciates the opportunity to comment on the Proposed Revisions included in the Call Report Request for Comment. We agree with most of the proposed changes and urge the regulators to consider including in the final revisions to the Call Report the suggested changes that we believe will improve the value of the Call Report. We appreciate the Agencies’ efforts to strike the appropriate balance between including items to help monitor risk sensitivity while not creating burdensome or unnecessary reporting.

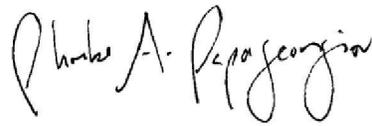
We invite the staff of the Agencies to contact Kathleen P. McTighe at (202) 663-5331 or kmctighe@aba.com, if they have any questions. For questions regarding comments on the proposed Schedule RC-T changes, please call or write Phoebe Papageorgiou at (202) 663-5053 or phoebep@aba.com.

Thank you for considering our comments and recommendations.

Sincerely,

Handwritten signature of Kathleen P. McTighe in black ink.

Kathleen P. McTighe

Handwritten signature of Phoebe Papageorgiou in black ink.

Phoebe Papageorgiou