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January 22, 2010

Submitted via E-mail

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Office of the Comptroller of
the Currency
Public Information Room, Mailstop 2-3
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Washington, DC 20219
Attention: 1557-0081

Gary Kuiper
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Attn: Comments, Room F-1072
Federal Deposit Insurance
Corporation
550 17th Street, NW
Washington, DC 20429

Jennifer J. Johnson
Secretary
Federal Reserve Board
20th Street & Constitution Avenue, NW
Washington, DC 20551

Re: Agency Information Collection Activities: Submission for OMB Review;
Joint Comment Request; 74 Federal Register 68314; December 23, 2009;
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 Agency Information Collection Activities and Joint Comment Request (Joint Comment Request) revisions 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). ABA's comments are limited to the Agencies' revisions to the Call Report relating to

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 \$13.5 trillion in assets and employ over 2 million men and women.

² 74 *Fed. Reg.* 68314 (December 23, 2009).

“Assets Covered by FDIC Loss-Sharing Agreements.”³ These revisions will be implemented by the Agencies effective March 31, 2010.

ABA recommended to the Agencies in response to their August 19, 2009, proposed revisions to the Call Report⁴ that they collect information from banks that acquire assets of a failed depository institution that are covered by a FDIC loss-sharing agreement. These changes were requested to address an issue of increasing importance to banks that enter into loss-sharing agreements with the FDIC as a result of an acquisition. As the Agencies state in the Joint Comment Request, the FDIC has entered into loss-sharing agreements with acquiring institutions in connection with approximately 80 failed bank and thrift acquisitions over the past year, and continued use of FDIC loss-sharing agreements is expected relating to resolutions of failed insured institutions.⁵

At that time of the earlier proposal, there had been no guidance from the Agencies on how the acquiring bank should report the loss-sharing agreement on the Call Report. As a result, the Call Report requirements could lead to over-reporting of the amount of “troubled” assets by not providing the reader with a readily accessible summary of the bank’s net exposures on assets that are subject to FDIC loss-sharing agreements.

The recent changes take a helpful step to address this problem by adding four new items to the Call Report on assets covered by FDIC loss-sharing agreements in response to our recommendation. The Agencies have agreed to add summary data on covered assets to the Call Report Schedule RC-M, Memoranda, effective March 31, 2010. The new data provide that “banks that have entered into loss-sharing agreements with the FDIC would separately report the carrying amounts of (1) Loans and leases, (2) other real estate owned, (3) debt securities, and (4) other assets covered by such agreements.”⁶ The Agencies state that they “will also consider whether the collection of additional information concerning covered assets would be warranted and, if so, it would be incorporated into a formal proposal that the agencies would publish with a request for comment...”⁷

While these changes are a step in the right direction, ABA believes it would be beneficial to regulators, reporting banks, investors, and the public to have additional, more granular information about the various categories of assets subject to the FDIC loss-sharing agreements. While we recognize that this would result in additional reporting burden on banks, on balance our members feel strongly that the benefit of additional disclosure of loss-sharing data would outweigh the burden of

³ See *id.*, at 68323-68324, Section II. H, Assets Covered by FDIC Loss-Sharing Agreements.

⁴ 74 *Fed. Reg.* 41973 (August 19, 2009).

⁵ *Id.*, note 2, at 68323.

⁶ *Id.*, note 2, at 68324.

⁷ *Id.*

providing these detailed data. Thus, we urge the Agencies and the FFIEC to further revise the collection of data from banks on assets covered by FDIC loss-sharing agreements on the Call Report to include the several changes suggested below.

Set forth in the appendix to this letter are several recommended changes to the Call Report and related instructions. We believe these changes would provide a more precise and accurate picture of a bank's asset quality.

Several of the changes also would clarify the appropriate risk weight of the assets covered by FDIC loss-sharing agreements. While we have heard mixed messages regarding the appropriate risk weight for these assets, it is our understanding that informal advice has been given to banks suggesting these assets should be risk-weighted at 20 percent. Given that there appears to be some uncertainty on this issue, we urge the Agencies to review this issue at your earliest convenience and to consider risk-weighting these assets at zero percent given the FDIC's commitment. In light of our current understanding of the Agencies' advice that these assets should have a 20 percent risk weight, we have suggested revisions to the instructions to Schedule RC-R that correspond to assets in that risk-weight category. Should the regulators believe that a zero percent risk weight is appropriate, the changes would need to be made to the corresponding lines in the Call Report instructions.

ABA appreciates the opportunity to comment on the revisions included in the Joint Comment Request. We believe our recommendation that the Agencies revise the uniform summary guidance on the method of reporting FDIC loss-sharing information in the Call Report to include more detailed reporting will provide more accurate, and therefore more reliable, statements of banks' condition.

Please contact the undersigned at (202) 663-5331 or kmctighe@aba.com, if you have any questions. Thank you for considering our comments and recommendations.

Sincerely,

A handwritten signature in black ink that reads "K. P. McTighe". The signature is written in a cursive, slightly slanted style.

Kathleen P. McTighe
Senior Counsel

Appendix

Proposed changes to the Call Report:

Schedule RC-M - Memoranda: New items included under line 13. Assets covered by loss-sharing agreements with the FDIC:

New Line 13. a. Loans and leases (included in Schedule RC, items 4.a and 4.b):

- Revise line 13.a. by deleting the parenthetical (included in Schedule RC, items 4.a and 4.b); and
- Replicate and add as part of new line 13.a. all of the detailed information included in Schedule RC-C – Loans and Lease Financing Receivables, Part I., Loans and Leases, lines 1 – 12 and all the subcategories of these lines.

The majority of assets covered by FDIC loss-sharing agreements fall in this asset category.

New Line 13.b. Other real estate owned (included in Schedule RC, item 7):

- Revise line 13.b. by deleting the parenthetical (included in Schedule RC, item 7); and
- Replicate and add as part of new line 13.b. all of the detailed information on other real estate owned that is reported in Schedule RC-M, Memoranda, items 3 – 3.h.

Schedule RC-N (Past Due and Nonaccrual Loans, Lease, and Other Assets):

Line 10 provides: “Loans and leases reported in items 1 through 8 above which are wholly or partially guaranteed by the U.S. Government (including loans and leases covered by FDIC loss-sharing agreements)

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- Revise Line 10 by deleting “(including loans and leases covered by FDIC loss-sharing agreements)” and substituting “(excluding loans and leases covered by FDIC loss-sharing agreements)”.
- Add a new Line 11 to Schedule RC-N as follows:
“Loans and leases reported in items 1 through 8 above which are covered by a FDIC loss-sharing agreement.
 - Guaranteed portion of loans and leases included in item 11 above.”

Proposed changes to Call Report Instructions:

Schedule RC-M – Memoranda: Item No. 13.d. (Other assets):

⁸ Draft FFIEC 031 for March 31, 2010, at 40.

Add to the first line, following “Report the balance sheet carrying amount of all assets” the following: “including the FDIC loss-sharing indemnification asset.”

We believe that is the intent of the Agencies and the FFIEC for item 13.d. to include the loss-sharing indemnification asset, and specifically stating so would eliminate confusion that currently exists.

Schedule RC-R (Regulatory Capital):

Item No. 35 (Held-to-maturity securities) and Item No. 36 (Available-for-sale securities):

Add to the end of the bullets for item numbers 35 and 36 that are captioned “In column D-20% risk weight” the following:

- “Also include the carrying value of any securities reported in Schedule RC-B that are covered by loss-sharing agreements with the FDIC.”

Item No. 38 (Loans and leases held for sale):

Revise the bullet that is captioned “In column D-20% risk weight” in the following manner:

- Delete “and” on the seventh line following the term “items 3 and 4”;
- Insert “,” on the ninth line following “Other consumer loans” before the quotation mark; and
- Add at the end of the bullet the following:
 - “and the carrying value of any HFS loans and leases that are reported in Schedule RC-C, Part I, items 1 through 11 that are covered by loss-sharing agreements with the FDIC.”

Item No. 39 (Loans and leases, net of unearned income):

Add to the end of the bullet that is captioned “In column D-20% risk weight” the following:

- “Also include the carrying value of any loans and leases reported in Schedule RC-C, Part I, items 1 through 11 that are covered by loss-sharing agreements with the FDIC.”

Item No. 42 (All other assets):

Add at the end of the bullet that is captioned “In column C-0% risk weight”:

- “Also include the carrying amount of any prepaid deposit insurance assessments reported in Schedule RC-F, item 6.F.”

While this revision does not relate to the FDIC loss-sharing issue, we urge the Agencies and the FFIEC to make this clarification for zero percent risk weight for

prepaid deposit insurance assessments in the instructions for item 42. This is consistent with the FDIC guidance provided in both the FDIC Final Rule on Prepaid Assessments⁹ and the FFIEC Supplemental Instructions for the Fourth Quarter 2009 Call Report¹⁰ that indicate that the risk weight category should be zero percent for prepaid deposit insurance assessments included in item 42 of Schedule RC-R.

Add to the end of the bullet that is captioned “In column D-20% risk weight” the following:

- “Also include the carrying value of other real estate owned in Schedule RC-Balance Sheet, item 7, and any other assets reported in Schedule RC-F that are covered by loss-sharing agreements with the FDIC, including FDIC loss-sharing indemnification assets reported in item 6.e. of Schedule RC-F.”

⁹ 74 *Fed. Reg.* 59056 (November 17, 2009), at: <http://www.fdic.gov/regulations/laws/federal/2009/09finalAD51Nov17.pdf>.

¹⁰ FDIC FIL-76-2009 (December 31, 2009), Supplemental Instructions at: <http://www.fdic.gov/news/news/financial/2009/fil09076.html>.