BANK POLICY INSTITUTE

March 26, 2024

Via Electronic Mail

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
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Federal Deposit Insurance Corporation
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Attention: Comments, Room MB-3128

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, D.C. 20219
Attention: Comment Processing, 1557-0081, 1557-0239, and 1557-0325

Re: Call Report, FFIEC 101 and FFIEC 102 Revisions

Ladies and Gentlemen:

The Bank Policy Institute[1] appreciates the opportunity to comment on the joint proposal[2] issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency that would amend the Consolidated Reports of Condition and Income (the "Call Report"), the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (the "FFIEC 101"), and the Market Risk Regulatory Report for Institutions

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

2 FDIC, Federal Reserve, OCC, *Proposed Agency Information Collection Activities; Comment Request*, 89 Fed. Reg. 5,297 (Jan. 26, 2024).

Subject to the Market Risk Capital Rule (the "FFIEC 102").[3] The Proposal broadly addresses aspects of the Call Report, FFIEC 101 and FFIEC 102 reporting forms that are intended to reflect the proposed revisions to the regulatory capital rules that the Agencies proposed in July 2023, commonly referred to as "Basel III Endgame," which would amend the capital requirements applicable to large banks[4] and banks with significant trading activity.[5]

I. It is premature to revise the Call Report, FFIEC 101 and FFIEC 102 reporting forms given that the comment period for the Basel III Endgame proposal only recently closed.

It is critical that the Agencies harmonize the revisions to the reporting forms and instructions with the final version of the Basel III Endgame rulemaking to avoid unnecessary cost and duplication. This is particularly true in light of recent testimony from Federal Reserve Chair Powell indicating the potential for "broad and material changes" to the Basel III Endgame proposal.[6]

Specifically, the Agencies should publish a re-proposal for implementing changes to these reporting forms only after the final rules implementing Basel III Endgame are published. There should be one proposed version of the updated reporting forms and instructions after the Basel III Endgame standard has been finalized, as opposed to multiple iterations of revisions to the reporting forms and instructions. This approach is particularly important in light of the extent of the anticipated changes between the initial proposal and any final rule, as well as the prospect for the initial proposal to be re-proposed.[7]

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3 *See* Proposed Agency Information Collection Activities; Comment Request, 89 Fed. Reg. 5,297 (Jan. 26, 2024). This letter focuses in particular on the aspects of the Proposal relating to the regulatory capital numerator, credit risk, operational risk and other overarching issues. The comment letter on the Proposal submitted by the International Swaps and Derivatives Association, Inc. ("ISDA") and the Securities Industry and Financial Markets Association ("SIFMA") address other aspects of the Proposal. We support the recommendations from ISDA/SIFMA and urge the Agencies to implement our recommendations and those in the ISDA/SIFMA letter.

4 In this letter, the term "bank" includes all banking organizations as defined in the Basel III Endgame proposal. *See* 88 Fed. Reg. at 64,030, note 1.

5 *See* Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity, 88 Fed. Reg. 64,028 (Sept. 18, 2023).

6 U.S. Senate Committee on Banking, Housing, and Urban Affairs, *The Semiannual Monetary Policy Report to the Congress* (Mar. 7, 2024), *available at* https://www.banking.senate.gov/hearings/02/29/2024/the-semiannual-monetary-policy-report-to-the-congress; U.S. House Financial Services Committee, *The Federal Reserve's Semi-Annual Monetary Policy Report* (Mar. 6, 2024), *available at* https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409159 (together, the "Powell Testimony").

7 As discussed above, Chair Powell referenced potential "broad and material changes" in recent Congressional testimony. *See* Powell Testimony. *See also* Letter from the Bank Policy Institute, Financial Services Forum, the Securities Industry and Financial Markets Association and the U.S. Chamber of Commerce to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, James P. Sheesley, Assistant Executive Secretary, Federal Deposit Insurance Corporation, and Chief Counsel's Office, Office of the Comptroller of the Currency (Jan. 12, 2024), *available at* https://bpi.com/wp-content/uploads/2024/01/Joint-Trades-Legal-Comment-on-Basel-III-Endgame-Proposal-FINAL.pdf.

II. The scope of information subject to public disclosure under the Proposal is overbroad and could cause competitive harm.

In general, the Proposal would expand significantly the scope and level of information that would be subject to public disclosure.

The proposed revisions to the FFIEC 101 in particular would require detailed public reporting with respect to aspects of the proposed revisions to the operational risk capital framework under Basel III Endgame, notably regarding a bank's historical operational losses. Although the Basel Committee's Pillar III disclosure framework generally provides that "banks should disclose any other material information, in aggregate, that would help inform users as to its historical losses or its recoveries, with the exception of confidential and proprietary information, including information about legal reserves,"[8] the proposed revisions to FFIEC 101 do not include these exceptions.

As a supervisory matter, the additional level of detail appears broadly consistent with regulatory objectives. But the breadth of the proposed public disclosure raises serious concerns regarding misinterpretation by the public and potential disclosure of competitive and other sensitive information, specifically with respect to the following Schedules of the proposed FFIEC 101:

- Schedule OR1: Schedule OR1 would require granular reporting of historical operational losses. Accordingly, Schedule OR1 should be confidential because public disclosure would risk disclosing proprietary information of banks, including with respect to legal reserves.[9]

- Schedule CR2: Schedule CR2 would require disclosure of exposures for which a bank does or does not recognize credit risk mitigation, including the specific techniques for recognizing credit risk mitigation (i.e., collateral, eligible guarantees and eligible credit derivatives) across asset categories. This information may disclose a bank's broad risk mitigation approach, which raises concerns for banks executing hedging strategies.

- Schedule SEC1, SEC2, SEC3 and SEC 4: The proposed securitization schedules would result in significant increases in the level of detail regarding securitization exposures that would be publicly disclosed. Schedule SEC1 and SEC2 would require disclosure of the bank's exposures as an originator or investor in respect of securitizations across asset classes; Schedule SEC 3 and SEC 4 would require detailed information regarding the volume of securitization exposures segmented by risk-weighted assets ("RWA") buckets and other RWA approaches. The proposed frequency and granularity of these disclosures could hinder a bank's ability to provide liquidity in these markets. As a general matter, existing public reporting regarding securitization activities (for example, in periodic reports filed under the Securities Exchange Act of 1934) provides

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8 Basel Committee on Banking Supervision, *Pillar 3 disclosure requirements – updated framework* Section 1.2 (Dec. 2018).

9 This information is reported on the FR Y-14Q but is kept confidential.

the public with an appropriate level of information on these activities.

III. The Agencies must provide adequate time for banks to update reporting systems and processes to reflect the Basel III Endgame standard.

In light of the sweeping changes to the reporting forms and instructions as a result of implementing Basel III Endgame, banks will need sufficient time to update and build reporting systems and capabilities to reflect the final Basel III Endgame standard.

Accordingly, the proposed revisions to the Call Report, FFIEC 101 and FFIEC 102 should be published after the final Basel III Endgame standard and the effective date of the final changes to these reporting forms should be synchronized with the effective date of the final Basel III Endgame standard, with the final forms and instructions released sufficiently in advance to allow banks to make the required changes to their reporting systems, governance and control processes.

IV. The proposed revisions to the Call Report should be replicated in Form FR Y-9C.

The Call Report is filed by national banks, state member banks, insured state nonmember banks and savings associations. In contrast, bank holding companies, savings and loan holding companies, securities holding companies and U.S. intermediate holding companies file the FR Y-9C.

A final Basel III Endgame rule would require revisions both to the Call Report and the FR Y-9C. Accordingly, as a matter of administrative efficiency and to avoid duplication, the revisions to the Call Report that the Agencies propose to reflect the final Basel III Endgame standard should also be part of one package that includes related proposed revisions to the FR Y-9C.

V. Technical Comments

We have included a list of technical comments on the Proposal in the Appendix.

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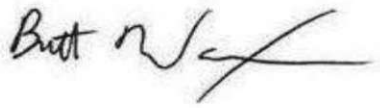
The Bank Policy Institute appreciates the opportunity to comment on the Proposal. If you have any questions, please contact the undersigned by phone at 347.237.7368 or by email at Brett.Waxman@bpi.com.

Respectfully submitted,



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Appendix – Technical Comments

I. Regulatory capital numerator (Call Report and Schedule RCCR of the FFIEC 101)

A. The revisions to the Call Report and FFIEC 101 should clarify the treatment of CEIO strips.

Under the Basel III Endgame proposal, a bank would be required to deduct from common equity tier 1 ("CET1") capital any portion of a credit-enhancing interest only ("CEIO") strip that does not constitute after-tax-gain-on sale.[10] However, the proposed revisions to the Call Report and FFIEC 101 do not specifically reference the CET1 deduction with respect to CEIO strips that do not constitute after-tax-gain-on sale.[11]

Accordingly, the Call Report and FFIEC 101 should be revised to make clear that any portion of a CEIO strip that does not constitute after-tax-gain-on sale is deducted from CET1.

B. The FFIEC 101 should specify the appropriate scope of the threshold for ALLL and AACL includable in Tier 2 capital.

Under the Basel III Endgame proposal, the maximum amount of allowance for loan and lease losses ("ALLL") or adjusted allowances for credit losses ("AACL") includable as Tier 2 capital for purposes of the standardized approach is 1.25 percent of standardized total RWAs not including market RWAs for banks subject to market risk capital requirements.[12]

However, the revisions to the FFIEC 101 do not clearly specify that, for purposes of determining this maximum amount of ALLL or AACL includable as tier 2 capital for purposes of the standardized approach, market RWAs are excluded. In particular, the revisions to Schedule RCCR Item 27 of the FFIEC 101 provide that "under the generally applicable capital rule the maximum amount of includable AACL is limited to 1.25 percent of risk-weighted assets." The proposed revisions to the FFIEC 101 do not specifically reference that, for purposes of the standardized approach, the 1.25 percent threshold excludes market RWAs for banks subject to market risk capital requirements.

Accordingly, the FFIEC 101 instructions should be revised to clarify that the maximum amount of ALLL or AACL includable as Tier 2 capital is 1.25 percent of RWAs excluding market RWAs for banks subject to market risk capital requirements.

C. The FFIEC 101 should clearly specify the application of the RWA transition provisions.

The Basel III Endgame proposal would provide a 3-year transition period to phase in RWAs as calculated under the proposed expanded risk-based approach ("ERBA").[13] Under this approach, a bank would multiply its total RWA as calculated under ERBA by the percentage provided in Table 2 to §_.300 during the transition period.

The proposed revisions to the FFIEC 101 do not consistently apply the RWA transition provisions

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10 §_.132(c); 88 Fed. Reg. at 64,072.

11 Call Report Schedule RC-R Part I Item 10b; FFIEC 101 Schedule RCCR Item 13.

12 §_.20(d)(3).

13 §_.300(b).

under Schedule RCCR. In particular, Item 60 of Schedule RCCR would require a bank to report its total RWA under ERBA, as reported in Item 10 of Schedule OV1, multiplied by the applicable transition percentage as of the reporting date. This suggests that RWAs reported on Schedule OV1 do not reflect the application of these transition provisions. However, in contrast, Item 50 of Schedule RCCR would require a bank to report the amount of AACL includable in total capital under ERBA, which would be limited to 1.25 percent of the bank's total credit RWAs for the AACL calculation as reported in Item 1 of Schedule OV1. Item 50 does not specifically reference the transition provisions. Therefore, this approach appears to create inconsistency between the numerator—which, for Item 50, seems to be based on RWAs calculated under ERBA on a fully phased-in basis even during the transition period—and the denominator, which in Item 60 reflects the ERBA transition provisions.

In addition, Insert C of Schedule RCCR providing text for Item 60 of Schedule RCCR of the FFIEC 101 refers to an Item 13 in Schedule OV1 of the FFIEC 101. The proposed Schedule OV1 of the FFIEC 101 does not include an Item 13.

II. Credit risk mitigation and retail exposures (Schedule CR1, CR2 and CR3 of the FFIEC 101)

A. Defaulted real estate exposures should be reported separately from other categories of real estate exposures to conform with Basel III Endgame.

The Basel III Endgame proposal would separately define categories of real estate exposures for purposes of ERBA, including acquisition, development or construction ("ADC") exposures, regulatory residential real estate exposures, regulatory commercial real estate exposures, other real estate exposures and defaulted real estate exposures. The proposed revisions to the FFIEC 101 reporting form generally would group defaulted real estate exposures as part of the other separately defined categories of real estate exposures in Schedule CR1 and CR3.

Defaulted real estate exposures should be reported separately from these other categories of real estate exposures to harmonize with the Basel III Endgame proposal.

B. The scope of retail exposures with respect to eligible margin loans and securities-based loans should be clarified.

Under the Basel III Endgame proposal, the scope of retail exposures include revolving credit or line of credits, or a term loan or lease under the proposed definition of regulatory retail exposure.[14]

The FFIEC 101 form should clarify if eligible margin loans or securities-based loans should be included within the scope of retail exposures for purposes of Schedule CR1 and CR3.

C. Several aspects of the reporting forms and instructions with respect to the 1.5 multiplier for currency mismatches require clarification.

1. The 1.5 multiplier should apply only to non-U.S. dollar-denominated exposures with respect to retail exposures.

The Basel III Endgame proposal introduces inconsistency regarding the scope of the proposed 1.5 multiplier with respect to certain retail and residential mortgage exposures with a currency mismatch.

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[14] §_.101.

Specifically, under the Basel III Endgame proposal rules text, a bank would apply a 1.5 multiplier to the applicable risk weight (subject to a maximum risk weight of 150 percent) to a residential mortgage exposure or retail exposure in a foreign currency to a borrower that does not have a source of repayment in the currency of the loan equal to at least 90 percent of the annual payment.[15] However, the preamble to the Basel III Endgame proposal provides that the 1.5 multiplier would apply to retail and residential mortgage exposures to a borrower that does not have a source of repayment in the currency of the loan.[16]

The proposed revisions to the FFIEC 101 in Schedule CR3 suggest that the 1.5 multiplier would apply whenever there is a currency mismatch between the lending currency and the borrower's source of repayment. However, with respect to retail exposures, the 1.5 multiplier should apply only to non-U.S. dollar-denominated exposures, as specified under the proposed rules text.

Accordingly, with respect to retail exposures, the FFIEC 101 instructions should be revised to clarify that the 1.5 multiplier applies only to non-U.S. dollar-denominated exposures.

2. The proposed revisions to FFIEC 101 are internally inconsistent in respect of reporting exposures subject to the 1.5 multiplier.

The proposed revisions to FFIEC 101 are internally inconsistent regarding reporting exposures subject to the 1.5 multiplier for currency mismatches.

Specifically, Part 1 of the instructions for Schedule CR3 provides that exposures subject to the currency mismatch are included in Column Y. However, Item 6 and Item 7 of Schedule CR3 provide that residential real estate exposures and retail exposures with currency mismatches, respectively, are reported in column Y where the risk weight from application of the multiplier is not in any of the corresponding risk weights in columns B through X.

The FFIEC 101 instructions should be revised to specify more clearly the appropriate reporting of exposures subject to the 1.5 multiplier for currency mismatches.

D. The scope of other real estate exposures in Schedule CR3 of the FFIEC 101 should be clarified.

The Basel III Endgame proposal would provide a definition for an "other real estate exposure."[17]

Memorandum Item 5.c of Schedule CR3 of the FFIEC 101 should specify whether "other real estate exposures" to be reported in Item 5.c reflect "other real estate exposures" as defined in the Basel III Endgame proposal, or alternatively reflect all real estate exposures that would not otherwise be reported in Item 5.a (high volatility commercial real estate exposures) or Item 5.b (regulatory commercial real estate exposures) of Schedule CR3.

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15 §_.111(f)(9), §_.111(g)(3).

16 88 Fed. Reg. at 64,053.

17 §_.101.

E. Schedule CR3 should be revised to permit banks to populate the 2 percent and 4 percent RWA buckets.

The proposed revisions to FFIEC 101 Schedule CR3 would not permit a bank to report a risk weight of either 2 percent or 4 percent with respect to on-balance sheet exposures. However, under the current U.S. capital rules, as well as the Basel III Endgame proposal, a qualifying central counterparty ("QCCP") is an eligible guarantor.[18]

In general, exposures to a QCCP receive a risk weight of 2 percent or 4 percent under both the current U.S. capital rules and the Basel III Endgame proposal.[19] Accordingly, a bank could substitute the risk weight associated with a QCCP as protection provider for the risk weight otherwise assigned to the underlying exposure to the extent the requirements for applying the substitution approach are satisfied.[20]

F. The proposed reporting of eligible credit derivatives in Schedule CR2 of the FFIEC 101 should be clarified.

In general, Schedule CR2 of the revisions to the FFIEC 101 reporting form would require disclosure of credit risk mitigation ("CRM") techniques, in particular financial collateral, eligible guarantees and eligible credit derivatives. Column B would require reporting of the carrying value of exposures receiving CRM benefits through at least one CRM technique and Columns C through Column E would require reporting of exposures secured or covered by financial collateral, eligible guarantees and eligible credit derivatives respectively.

The extent of overlap between amounts covered in Columns B through Column E should be clarified, in particular with respect to eligible credit derivatives. For example, it is unclear whether Column D (eligible guarantees) is intended to be entirely exclusive with Column E (eligible credit derivatives) and whether Column B (exposures receiving CRM benefits) is intended to be exclusive with Column C (financial collateral), Column D and Column E.

G. The reporting of exposure amounts for guarantees and credit derivatives should be clarified.

Schedule CR1 of the FFIEC 101 would include reporting of on-balance sheet amounts and OTC derivative and off-balance sheet amounts both before and after applying credit conversion factors and applicable credit risk mitigation techniques.

Reporting exposure amounts both before and after taking into account the credit risk mitigation benefits of financial collateral is sensible given that a bank may reduce the exposure amount to reflect financial collateral. However, with respect to credit risk mitigation in the form of guarantees or credit derivatives in which the bank applies credit risk mitigation through the substitution approach, the exposure amount itself does not change. Instead, the risk weight applicable to the exposure may change (in particular, by substituting the risk weight of the protection provider for the risk weight of the

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18 *See* Section 2 of the current U.S. capital rules.

19 *See* Section 32(f)(2)-(3) of the current U.S. capital rules.

20 §_.120.

underlying exposure).[21]

Accordingly, the Agencies should clarify reporting of the exposure amount before and after credit risk mitigation in the form of guarantees or credit derivatives for which a bank uses the substitution approach.

H. There should not be an option to report subordinated debt instruments or covered debt and other debt instruments with respect to real estate exposures.

The Memoranda section of Schedule CR3 of the FFIEC 101 would include reporting of exposures—including real estate exposures—based on the type of exposure and risk weight. Specifically, Column D would relate to subordinated debt instruments (excluding defaulted and defaulted real estate exposures) and Column E would relate to covered debt and other debt instruments (excluding defaulted and defaulted real estate exposures).

The Memoranda section of Schedule CR3 should be revised to "grey out" Column D and Column E with respect to real estate exposures because subordinated debt instruments and covered debt and other debt instruments are not relevant for real estate exposures.

III. Counterparty credit risk (Schedule CCR of the FFIEC 101)

A. Schedule CCR of the FFIEC 101 should not require separate reporting fields with respect to exchange traded derivatives and other derivatives.

Part 5 of Schedule CCR of the FFIEC 101 would require banks to segment exchange traded derivatives and other derivatives with QCCPs and non-QCCPs in Item 1a, Item 1b, Item 5a and Item 5b.

Banks should not be required to delineate exchange traded derivatives and other derivatives in the manner proposed. These categories are not required for purposes of regulatory capital calculations and would cause undue burdens for banks to produce.

B. Schedule CCR of the FFIEC 101 should be revised to include a 75 percent RWA bucket.

Part 2A and Part 2B of Schedule CCR of the FFIEC 101 broadly would require reporting of counterparty credit risk exposure by specified risk weights. However, Part 2A and 2B would not include a risk weight bucket of 75 percent notwithstanding that, under the Basel III Endgame proposal, the base risk weight for a Grade B bank exposure would be 75 percent.[22]

Accordingly, Part 2A and Part 2B of Schedule CCR of the FFIEC 101 should be revised to include a 75 percent RWA bucket.

C. The reporting of non-DvP/non-PvP unsettled transactions in Schedule CCR of the FFIEC 101 should be revised to enhance granularity.

Item 6 of Part 6 of Schedule CCR of the FFIEC 101 would require a bank to report the weighted average of risk weights of counterparties for all applicable exposures in Column A. In contrast, under the

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21 §_.120(c).

22 Table 2 to §_.111.

current FR Y-9C reporting form, these exposures are segmented by the applicable risk weight category.

Item 6 should be revised to segment reporting of these exposures by applicable risk weight category instead of requiring a bank to report the weighted average of risk weights. This approach would be simpler, easier to understand and reduce burdens on banks.

D. The timing of applying the 1,250 percent risk weight for non-DvP/non-PvP fails should be clarified.

Part 6 of Schedule CCR of the FFIEC 101 generally provides instructions with respect to reporting unsettled transactions for purposes of the proposed expanded risk-based approach ("ERBA"). With respect to non-DvP/non-PvP unsettled transactions, a bank would report these unsettled transactions from the business day after the bank has made its delivery until five business days after the counterparty delivery is due in Item 6 of Schedule CCR and report these unsettled transactions of which the counterparty delivery is overdue from five business days or more in Item 7 of Schedule CCR. In this regard, §_.115(e)(3) of the Basel III Endgame proposal generally provides that, if the bank has not received its deliverables by the fifth business day after counterparty delivery was due, the bank must assign a 1,250 percent risk weight to the current fair value of the deliverables owed to the bank.

The Agencies should clarify more precisely in Schedule CCR of the FFIEC 101 on what day a bank would apply the 1,250 percent risk weight in respect of non-DvP/non-PvP unsettled transactions, in particular whether this risk weight would apply on the fifth business day or starting the sixth business day (in each case after counterparty delivery was due).

E. The reporting of credit derivative exposures should be enhanced.

Part 4 of Schedule CCR of the FFIEC 101 broadly would require reporting of single-name credit default swaps ("CDS"), index CDS and total CDS. However, Part 4 would not include a specific category for other types of credit derivatives that are not CDS, such as total return swaps and credit options.

Accordingly, Part 4 of Schedule CCR of the FFIEC 101 should be revised to include a category of credit derivatives that are not CDS.

IV. Securitization exposures (Schedule SEC1, SEC2 and SEC3)

A. The definitions of a bank acting as "originator," "sponsor" and "investor" in SEC1 and SEC2 of the FFIEC 101 should be aligned with the Basel III Endgame proposal.

The general instructions to Schedule SEC1 and SEC2 of the proposed revisions to the FFIEC 101 includes the following definitions:

- *Reporting institution acts as originator*: The securitization exposures are the retained positions, even when not eligible for the securitization framework because the exposure has not met the operational requirements for securitization exposures.

- *Reporting institution acts as sponsor*: The securitization exposures include exposures to commercial paper conduits to which the bank provides program-wide enhancements, liquidity and other facilities.

- *Reporting institution acts as an investor*: The investment positions purchased in third-

party deals.

On the other hand, Section 2 of the current U.S. capital rules also includes a definition of an "originating" bank and an "investing" bank. In particular, an "originating" bank is a bank that (1) directly or indirectly originated or securitized the underlying exposures in the securitization; or (2) serves as an ABCP program sponsor to the securitization. An "investing" bank is a bank that assumes the credit risk of a securitization exposure other than an "originating" bank of the securitization. The Basel III Endgame proposal would not modify these current definitions.

The lack of alignment between the definitions in the general instructions to Schedule SEC1 and SEC2 of the FFIEC 101, on the one hand, and the definitions in the current U.S. capital rules, on the other hand, leads to confusion and ambiguity regarding how a bank should report certain types of products, including retained interests—such as interests held for purposes of satisfying regulatory risk retention requirements—and loans to securitization SPEs.

Accordingly, the FFIEC 101 reporting form and instructions should be revised broadly to align the definitions in the general instructions to Schedule SEC1 and SEC2 with the current definitions under the U.S. capital rules.

B. The Agencies should clarify the reporting of securitization exposures involving loans.

Securitization exposures involving loans to corporates broadly would be reported in Item 2 of Schedule SEC1 and SEC2 of the FFIEC 101. In particular, Item 2a of Schedule SEC1 and SEC2 refers to "securitization exposures involving loans to investment grade corporates" and Item 2b refers to "securitization exposures involving loans to non-investment grade corporates, including collateralized loan obligations in which the collateral includes leveraged loans."

The Agencies should specify the line item of the FFIEC 101 that a bank should use with respect to investment grade CLO positions in which the collateral includes leveraged loans. Relatedly, the FFIEC 101 instructions also should clarify how a bank should determine the appropriate line item when a securitization exposure includes both investment grade and non-investment grade collateral.

C. The reporting of investment firms that exercise "substantially unfettered control" is unclear.

Memorandum Item M2 of Schedules SEC1 through SEC4 generally provides for a bank to report "securitization exposures for transactions in which the underlying exposures are owned by an investment firm (i.e., a business that does not produce goods or provide services beyond the business of investing, reinvesting, holding, or trading in financial assets) that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures."

This language appears to be inconsistent with paragraph (8) of the definition of traditional securitization under the current U.S. capital rules. In particular, an investment firm that exercises "substantially unfettered control" under paragraph (8) of the definition could be excluded from treatment as a traditional securitization and therefore would not be treated as a securitization exposure under the U.S. capital rules.

The Agencies, therefore, should clarify whether this Memorandum Item M2 is intended to address exposures that would qualify for the exception from the definition of traditional securitization in paragraph

(8).

D. Banks should not be required to report securitization exposures subject to market risk on the FFIEC 101.

Schedule SEC2 of the proposed FFIEC 101 would require reporting of securitization exposures subject to Subpart F of the U.S. capital rules, i.e., the market risk capital requirements.

However, FFIEC 102—which would be revised under the Proposal—already would require reporting of exposures subject to market risk capital requirements. It would be unnecessarily duplicative to require banks to report securitization exposures subject to market risk capital requirements both on the FFIEC 102 and in Schedule SEC2 of the FFIEC 101.

E. Schedule SEC1 and SEC2 of the FFIEC 101 should include a reporting line item for total exposures.

Schedule SEC1 and SEC2 of the FFIEC 101 would require reporting of securitization exposures subject to Subpart E and Subpart F of the U.S. capital rule, respectively. Each of Schedule SEC1 and SEC2 of the FFIEC 101 should include a line item that would report all securitization exposures subject to Subpart E and Subpart F.

V. Equity exposures (Schedule EQ of the FFIEC 101)

A. The extent to which all indirect investment fund exposures should be reported in Item 21 is not clear.

The instructions to Part 2 of Schedule EQ of the FFIEC 101 provide that a bank would report in Column I "the risk-weighted amounts for equity exposures to investment funds subject to one of the look-through approaches, as described in §_.142." In turn, §_.142 of the Basel III Endgame proposal generally would determine the RWA amount of equity exposures to investment funds under ERBA, including equity exposures to an investment fund held by another investment fund.

The Agencies should clarify whether all indirect investment fund exposures should be reported in Item 21, or if certain types of indirect fund exposures would be reportable on a different line item.

B. The Agencies should clarify that the alternative modified look-through approach under Basel III Endgame reflects the fund's permissible investments, not its actual investments.

The Basel III Endgame proposal includes an alternative modified look-through approach pursuant to which a bank generally determines RWA amounts for exposures to an investment fund based on information provided in the fund's prospectus, partnership agreement or similar contract defining the fund's permissible investments.[23]

The proposed revisions to the FFIEC 101 reporting form should specify more precisely that the alternative modified look-through approach is based on the information defining the fund's permissible investments as set forth in the fund's prospectus, partnership agreement or similar contract, as opposed to the fund's actual investments. This approach would more closely align the FFIEC 101 with the general

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[23] §_.142(c).

methodology of the alternative modified look-through approach under Basel III Endgame.

C. The FFIEC 101 should include an adjustment column to modify carrying value, consistent with the proposed revisions to the Call Report.

The proposed revisions to the Call Report provide an adjustment column (Column B) that would modify the carrying value reported in Column A where necessary for purposes of reflecting the appropriate amount of standardized RWAs. However, the proposed revisions to the FFIEC 101 do not include this type of column adjusting the carrying value.

Accordingly, the FFIEC 101 should be harmonized with the Call Report and provide a form of adjustment column used to modify the carrying value for purposes of determining ERBA RWAs.

D. Several revisions and clarifications are needed regarding the reporting of equity exposures to significant investments in the capital of unconsolidated financial institutions.

1. Hedges of significant investments in the capital of unconsolidated financial institutions should not be reported on Schedule EQ of the FFIEC 101.

Schedule EQ of the FFIEC 101 would require a bank to report on Schedule EQ exposures that hedge equity exposures to significant investments in the capital of unconsolidated financial institutions in the form of common stock in Item 8. However, these types of hedges may be subject to market risk capital requirements under the Basel III Endgame proposal.[24]

Accordingly, these hedges should not be reported on Schedule EQ to the extent the hedge is subject to market risk capital requirements.

2. Clarification is needed regarding reporting indirect exposures to significant investments in the capital of unconsolidated financial institutions through investment funds that would be subject to market risk capital requirements.

Under the Basel III Endgame proposal, as discussed above, many exposures to investment funds would be subject to market risk capital requirements under paragraph (1)(ii)(C) of the market risk covered position definition.[25] In certain circumstances, a bank may have an indirect exposure to a significant investment in the capital of an unconsolidated financial institution through an investment fund in respect of an exposure to an investment fund subject to market risk capital requirements.

The proposed revisions to the FFIEC 101 and FFIEC 102 reporting forms do not clearly specify the reporting of these indirect exposures to a significant investment in the capital of an unconsolidated financial institution subject to market risk capital requirements.

Accordingly, the Agencies should specify whether these exposures should be reported on Schedule

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[24] In general, paragraph (1)(ii)(C) of the definition of market risk covered position under the Basel III Endgame proposal would include an equity position in an investment fund that is not otherwise excluded from the definition in paragraph (2)(vi) thereof. §_.202.

[25] §_.202.

EQ of the FFIEC 101 reporting form or in the FFIEC 102 reporting form.

VI. Operational risk (Schedule OR1, OR2 and OR3 of the FFIEC 101)

A. There should be a two-month lag with respect to public disclosure of operational loss data.

The preamble to the Basel III Endgame proposal provides that the agencies intend to propose modifications to the FFIEC 101 such that all inputs to the business indicator and total net operational losses would be publicly reported as separate inputs to the applicable calculations.[26] This is reflected in Schedule OR1 (Historical Operational Losses) and Schedule OR2 (Business Indicator and Subcomponents) of the revised FFIEC 101.

As discussed in the joint comment letter on the Basel III Endgame proposal submitted by BPI and the American Bankers Association ("ABA"), operational loss results should be reported on a two-month lag.[27] This time lag would permit banks to collect, review and validate the required data with respect to reporting operational losses. Because many banks have implemented verification and attestation processes to validate their general ledgers, any time lag shorter than two months could result in inadequate validation of data prior to reporting.

B. Aspects of the proposed operational risk framework regarding M&A and other asset purchases should be revised.

As discussed in the ABA/BPI comment letter, the Basel III Endgame proposal does not appropriately address how acquisitions or purchases that are not structured as an acquisition of a legal entity (*e.g.*, a portfolio or asset purchase) or purchases of legal entities in which specified assets are excluded (*i.e.*, "carved out") from the purchase should be reflected in the operational risk framework.

The Basel III Endgame proposal—and the re-proposal of the reporting forms and instructions discussed above—should provide that, in these circumstances, the loss and other data of the acquired portfolio prior to the acquisition are excluded. For these acquisitions, the bank is not acquiring an entire legal entity, nor is it integrating the business operations of a company into its own. Instead, the bank is purchasing a specified set of assets.

Accordingly, in these circumstances, only losses and other data for the purchased assets following the acquisition should be incorporated into the operational risk capital framework.

C. Fees for deposit insurance and other fees paid to regulators should be excluded from the Business Indicator Component.

Under the Basel III Endgame proposal, "the business indicator would not include applicable income taxes as an expense, as they reflect obligations to the government for which the operational risk capital

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[26] 88 Fed. Reg. at 64,083.

[27] *See* Letter from the American Bankers Association and the Bank Policy Institute to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, James P. Sheesley, Assistant Executive Secretary, Federal Deposit Insurance Corporation, and Chief Counsel's Office, Office of the Comptroller of the Currency, p. 104 (Jan. 16, 2024), *available at* https://bpi.com/wp-content/uploads/2024/01/ABA-BPI-Basel-III-Endgame-Comment-Letter-Final-2024.01.16.pdf.

framework should be neutral."[28]

For similar reasons, expenses paid to the FDIC for purposes of deposit insurance and other fees that a bank pays to regulators also should not be included in the Business Indicator. These types of fees also "reflect obligations to the government" that should not be incorporated into operational risk capital requirements and the FFIEC 101.

VII. Other technical comments

A. Further clarity is needed regarding the meaning of "economic capital" in the qualitative disclosures provided in the Basel III Endgame proposal.

Table 6 to §_.162 of the Basel III Endgame proposal would require banks to provide qualitative disclosure with respect to OTC derivatives, eligible margin loans and repo-style transactions, including a discussion of "[t]he methodology used to assign economic capital and credit limits for counterparty credit exposures."

The scope and meaning of the term "economic capital" in this context is not clear. The Agencies should specify the meaning of "economic capital" and in particular clarify how this term differs from regulatory capital.

B. The scope of "type of securitization SPEs" in the qualitative disclosures of the Basel III Endgame proposal should be clarified.

Table 8 to §_.162 of the Basel III Endgame proposal would require banks to provide qualitative disclosure with respect to securitizations, including a discussion of the "type of securitization SPEs" the bank, as sponsor, uses to securitize third-party exposures. The Agencies should provide greater specificity regarding the characteristics of a securitization SPE that a bank should describe in this qualitative disclosure.

C. The level of granularity regarding the regulatory capital instruments and other TLAC-eligible instruments in the qualitative disclosures of the Basel III Endgame proposal is not clear.

Table 15 to §_.162 of the Basel III Endgame proposal would require banks to provide qualitative disclosure with respect to each regulatory capital instrument and any other instrument that is an eligible debt security for purposes of total loss-absorbing capacity and long-term debt requirements. This qualitative disclosure would address 35 separate features of these regulatory capital instruments and eligible debt securities.

The Agencies should clarify the level of granularity with respect to the individual regulatory capital instruments and eligible debt securities that would be required under the proposed qualitative disclosure, and in particular the extent to which this information would need to be provided at the CUSIP-level. It would not be appropriate to require CUSIP-level granularity in respect of these instruments because that would place an undue burden on banks.

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[28] 88 Fed. Reg. at 64,085.