

February 26, 2014

**VIA ELECTRONIC MAIL**

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**Re: *Proposed Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure***

Dear Ladies and Gentlemen:

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to provide comments on the implementation timing for the Proposed Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure (Proposed Addendum).<sup>2</sup> The Proposed Addendum was published jointly by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation (Agencies). Under the Proposed Addendum, all bank holding companies and insured depository institutions (IDIs) that file consolidated tax returns would be required to review existing tax allocation agreements to ensure that the agreement: 1) acknowledges an agency relationship between the holding company and IDI with respect to tax refunds generated by the IDI; 2) does not contain language that could be interpreted as creating a holding company ownership interest in the tax refund; and 3) requires the holding company to promptly forward any payment due to the IDI under the tax allocation agreement. The Proposed Addendum also provides a specific paragraph the Agencies are requesting that institutions include in their tax allocation agreements

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<sup>1</sup> The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its 2 million employees. Learn more at [www.aba.com](http://www.aba.com).

<sup>2</sup> 78 Fed Reg. 76889 (December 19, 2013).

in order for those agreements to be deemed generally in compliance with the Proposed Addendum.<sup>3</sup>

As the Agencies state, the Proposed Addendum is “intended to clarify and supplement” the Interagency Policy Statement issued in 1998.<sup>4</sup> Generally, institutions are complying with the Agencies’ original policy statement and review tax allocation agreements annually. Therefore, the ABA is not providing comments on the substance of the Proposed Addendum. However, we urge the Agencies to provide sufficient time for institutions to review existing tax allocation agreements and processes, and amend such agreements and processes as necessary in the normal course of their annual review of such agreements.

Tax allocation agreements can be complex, covering a number of refund and tax payment scenarios and, in many cases, multiple subsidiaries and affiliates. Amending such agreements and making changes to processes implementing such agreements will take time to complete. For example, any changes to tax allocation agreements require review and signature of all of the subsidiaries and affiliates in the tax group. For many ABA members, including midsize and regional institutions, this could entail several hundred sign offs. For countless institutions, particularly smaller banks, this review may also require hiring outside counsel to make such changes to ensure that there are no unintended tax consequences resulting from such clarifications. Further, several ABA members have also indicated that amendments to tax allocation agreements require board of director approval, both at the IDI and parent company level, adding further to the time needed to make even minor clarifying amendments.

The ABA respectfully requests that institutions be allowed until the end of calendar year 2014 to amend, if necessary, their tax allocation agreements and processes to ensure consistency with the clarifications contained in the Proposed Guidance. This proposed time frame will allow institutions to make such changes in the normal course of their annual tax allocation reviews and reduce the expense and time in making clarifying off cycle changes to these agreements.

The ABA thanks the Agencies for their consideration of our comments. If you have any questions or need further information, please contact Beth Knickerbocker, Vice President and Senior Counsel, at [bknicker@aba.com](mailto:bknicker@aba.com) or (202) 663-5042.

Sincerely,



Beth Knickerbocker  
Vice President and Senior Counsel

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<sup>3</sup> *Id.* at 76891. The Proposed Guidance permits institutions to draft their own language provided such language is “substantially similar” to the paragraph provided by the Agencies.

<sup>4</sup> *Id.* at 76890.

cc:

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