American Bankers Association

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Office of the Comptroller of the Currency
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Mr. Gary Kuiper
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Attn. Comments, Room F-1086
Federal Deposit Insurance Corporation
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Information Collection
Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: 1550-0023 (TFR Schedule DI Revisions)

Re: Proposed Agency Information Collection Activities; Comment Request 76 Federal Register 14460; March 16, 2011; Joint Notice and Request for Comment; Consolidated Reports of Condition and Income (FFIEC 031 and 041) **OCC:** 1557-0081; **FRB:** FFIEC 031 and 041; **FDIC:** 3064-0052; **OTS:** 1550-0023 (TFR: Schedule DI Revisions)

Ladies and Gentlemen:

The American Bankers Association (ABA)[i] appreciates the opportunity to comment on the proposed revisions to the Consolidated Reports of Condition and Income (Call Report), the Thrift Financial Report (TFR), and the FFIEC Reports 002 and 002S[ii] as issued by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies). The agencies' proposed revisions to the Reports include several changes and new items to implement the FDIC Final Rule that redefines the deposit insurance assessment base.[iii]

This letter provides comments specifically on reporting for subprime consumer loans and leverage commercial loans or securities as defined in the Large Bank Pricing scoring model (LBP rule) adopted by the FDIC Board on February 7, 2011. A second letter will be filed by ABA that deals with other aspects of the proposed Call Report and TFR changes.

Following adoption of the LBP rule, banks began to analyze the requirements of the rule and take steps to provide the necessary data. In that implementation process, it has become apparent that banks do not have the data on subprime consumer loans and leveraged commercial loans or securities as the FDIC defined these terms, nor can the data be reasonably and consistently gathered. In addition, data on some specific loans cannot be obtained at all, such as in the case of loans acquired through portfolio purchases, mergers or securitizations.

Both the 2001 Interagency Expanded Guidance for Subprime Lending Programs ("Interagency Subprime Guidance") definition of subprime consumer loans and the 2008 Leveraged Lending Booklet contained in the Comptroller's Handbook definition of leveraged [commercial] lending provide a range of characteristics. Bankers classify their loans as subprime or leveraged based on general consideration of the sets of characteristics prescribed.[iv] Banks do not track whether a loan meets every one of the criteria for being considered a subprime or leveraged loan; rather, banks make a judgment based on whether some of the factors are present. Furthermore, subprime loans are classified not on a loan-by-loan basis but rather on a program basis, and a number of exclusions contained in the Interagency Subprime Guidance also apply (for example for community development loans). Banks' loan information systems do not have the data the FDIC would require, so banks cannot easily compile the data.

***The definitions have created an untenable situation for banks. They simply are unable to capture and report the data asked for in a way that is defensible and auditable. The situation is so severe that, should the Call Report and TFR proposal move forward without modification, it would be impossible for most banks to attest to the accuracy of the data reported.***[v]

We believe the Call Report and TFR proposal provides an opportunity to mitigate this serious problem in the near term until appropriate definitions can be constructed that both adequately reflect the risk exposures and enable banks to report data that can be reasonably and consistently gathered.

The concern over the Call Report and TFR proposal arises because of changes made in the final LBP rule. Unfortunately, the slight wording changes in the final LBP rule from the December 2010 proposal dramatically altered the reporting obligation from one that allowed some flexibility in meeting the standards – by providing factors that "may" be considered – to a list of factors that "must" be considered. This meant that information currently provided to the agencies on these exposures would not satisfy the definition and would require banks to investigate every existing loan (regardless of if they have viewed it as subprime or leveraged) to determine whether any of the individual factors would require categorization as subprime or leveraged. ***Thus, this small change in the final rule requires individual, manual, loan-level investigation of millions of loans, which even then may not yield the information sought.***[vi] This new burden raised the degree of difficulty for reporting to astronomical heights.

We note that in the final LBP rule, the claim was made that collecting the data should not be a problem as "data elements required to compute [these measures] are gathered during the examination process." That statement is inaccurate.[vii] It raises the question of whether the final rule inadvertently requires banks to provide more information than was anticipated to be provided.[viii] As noted above, generally banks do provide some data on these elements to their primary regulators – typically based on the 2001 Interagency Subprime Guidance on subprime or the 2008 Leveraged Loan Booklet. However, the data currently provided are materially different in many respects from what is contemplated in the final LBP rule and Call Report and TFR proposal. The guidance categorizes loans based on a range of possible characteristics, whereas the LBP rule categorizes based on whether ***any*** characteristic applies (regardless of other mitigating factors). Since the FDIC used numbers currently provided to calibrate its LBP model, it makes sense to realign the definitions to be consistent with current standards and practices – which have evolved over time to reflect true exposures.

***Given the current impossibility of providing the required data, we believe that it is prudent not to require these changes in the Call Report and TFR until more reasonable definitions can be created. It would be unwise to move forward on a requirement that cannot possibly be met by the industry.***

We realize that not implementing the Call Report and TFR changes related to these data elements will mean that these data will be missing from the LBP scoring model. But given that banks cannot in good faith provide the data required under the rule, or certify the accuracy of data that may be provided on subprime consumer loans and leveraged commercial loans, the use of these elements and the conclusions drawn from them for assessment purposes would be suspect. As these elements have not been explicitly used in assessing premiums before, and given that risk exposure is measured in many different ways from other variables included (particularly CAMELS ratings), exclusion of these data until reasonable definitions can be applied should not be problematic. It may well be the case that there is greater danger of inadvertent distortions in distinguishing relative risk among this set of large institutions by going forward with reporting as prescribed in the LBP rule.

While not requiring the data in question in the Call Report and TFR until a reasonable solution to the reporting issue can be found is the best approach, if the FDIC believes that the LBP rule compels reporting (beginning on June 30, 2011), a second-best option is to allow banks to file on the Call Report and TFR data that are currently being provided to their primary regulator, which typically conform with standards already established. For example, data already provided for subprime consumer loans under the Interagency Subprime Guidance or for leveraged loans under the 2008 Leveraged Loan Booklet could be used for filing purposes.

This can be done through Call Report and TFR instructions that clarify the intent of the rule and provide the necessary flexibility to report based on current practices. This approach would provide data that conforms with standards already established by regulators and refined over time, is defensible by the institution, is consistent with the calibration of the scoring model, and reflects the view expressed in the final rule that it is already being provided to regulators.

Even this second-best avenue is not without significant burden on many institutions. For example, for non-OCC regulated banks, it will still be a significant manual effort to determine a number for leveraged loans should the 2008 Leveraged Loan Booklet be used as one method for meeting the reporting requirement. For these banks, this is largely information that has not been systematically collected or even coded for collection. Thus, it would require considerable manual resources and new methods to capture, aggregate, and report the information. Given the short time frame, originating officers would have to focus on completing spreadsheets for credit administration personnel to compile and, in turn, provide to the regulatory reporting group. To be able to do this for the June 30, 2011 Call Report and TFR date would take a remarkable effort, and would divert credit personnel away from their primary responsibilities of meeting customer needs. Moreover, there will not be a high degree of comfort in the data provided, which once again raises certification concerns. We note that typical practice for new Call Report and TFR items is to have ***flexibility*** to provide data that may be revised subsequently as systems and data capture are refined to meet fully the expectations of the agencies.

This highlights another significant drawback in moving forward so quickly with data reporting before there is time to assure consistent and accurate data under reasonable definitions. Most data collected on the Call Report and TFR have been verified and audited over many years, and processes and controls have been created to ensure the accuracy of the data prior to its reporting on the Call Report and TFR. Moreover, for new reporting items, banks typically have the opportunity to revise data as systems are refined, and to create new processes and controls to verify the accuracy of the data. Because these new data flow into a model that is used to determine relative assessments for FDIC insurance, it is critical that experience be gained before such data are used to affect pricing.

***Given the magnitude of any change that is made for reporting these data elements – and given their use in the assessment model that influences the relative prices that institutions will pay for FDIC insurance coverage – it is critically important to engage in a thorough discussion of what should be appropriate definitions of subprime and leveraged loans in the LBP rule.*** This should be done with a heavy emphasis on what is currently provided to regulators so as to minimize the reporting burden on banks and weigh the benefits of providing any additional data against the associated burden.

Moreover, whatever definition is finally adopted, it is extremely important that a reasonable time frame for reporting be provided to assure consistency and accuracy. The more prescriptive the definition, the more time is required to obtain and report the data. Given the importance of these definitions in the FDIC assessment determination, taking time to assure the system is working correctly is an absolute necessity. The process followed to date has unfortunately failed to do this.

We do not believe the impact of such a small wording change was fully appreciated by the FDIC at the time the final LBP rule was adopted. We believe that had the impact of such a change been fully understood at the time, the change would and should have been exposed to public comment before becoming final. Moreover, given the magnitude of the change, there should also have been an investigation by the FDIC of the additional reporting burden such a change required. There is no indication that a credible cost/benefit analysis was conducted using the data that the FDIC now wants banks to use. Given the extraordinary compliance burden the FDIC's approach will impose, it is imperative that the benefits of this approach be carefully considered and weighed against that burden.

It is time to step back and have a thorough review. We believe that the immediate harm can be mitigated by either delaying the inclusion of these elements in the Call Report and TFR or, if that is impossible given the implementation of the LBP rule, by using the Call Report and TFR instructions to enable reporting based on currently accepted practices for defining a subprime consumer or a leveraged commercial loan or security.

Sincerely,

James Chessen

[i] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees.

[ii] 76 *Fed. Reg.*14460 (March 16, 2011).

[iii] On February 7, 2011, the FDIC Board of Directors adopted the final rule implementing the requirements of Section 331(b) of the Dodd-Frank Act by amending Part 327 of the FDIC's regulations to redefine the assessment base used for calculating deposit insurance assessments effective on April 1, 2011. (*See* 76 *Fed. Reg.* 10672) (February 25, 2011).

[iv] The Interagency Subprime Guidance provides that "**[g]enerally**, subprime borrowers will display a range of credit risk characteristics that ***may*** include one or more of the following: (1) two or more 30-day delinquencies in the last 12 months or one or more 60-day delinquencies in the last 24 months; (2) judgment, foreclosure, repossession, or charge-off in the prior 24 months; (3) bankruptcy in the last 5 years, (4) FICO score below 660 (depending on the product/collateral) or equivalent; and (5) debt service-to-income ratio above fifty percent. [emphasis added]

Similarly, the 2008 Leveraged Loan Booklet defines leveraged lending based on a range of characteristics that "commonly contain one or more of the following conditions:" (1) the proceeds are used for buyouts, acquisition, and recapitalization; (2) the transaction results in a substantial increase in the borrower's leverage ratio (such as a two-fold increase in liabilities resulting in total liabilities/total assets over 50 percent, a balance sheet leverage ratio above 75 percent, total debt over 4 times EBITDA, or senior debt over 3 times EBITDA; (3) designation as a highly leveraged transaction by the syndication agent; (4) non-investment-grade-rated borrower with a high debt-to-net-worth ratio; and (5) loan pricing indicative of a non-investment-grade company.

[v] While not the subject of this letter, we note that the approach being proposed by the FDIC calls into serious question whether the LBP rule, as applied, can be equitably implemented. Banks do not (nor did they) have the data necessary for the FDIC to evaluate the rule. Thus, this will result in assessments being set based on a formula that has an arbitrary and unpredictable element to it. It is, quite simply, impossible for the FDIC to have reached conclusions in that rule based on a reliable estimate of the rule's impact. Moreover, it calls into question how the FDIC was able to conduct a meaningful cost/benefit analysis when it could not have had the data that the FDIC needs to implement the LBP rule.

[vi] By requiring reporting based on a set of specific factors, some loans would be classified as subprime or leveraged that are ***not*** subprime or leveraged. For example, no bank would consider a consumer loan to be subprime solely because the individual has been delinquent on small bills such as utilities or parking tickets by a month twice in the past year, or two months delinquent once in the past two years. There may be other factors, such as a very low loan-to-value ratio or a long history of prompt payments that would make this a prime loan. Instead, under the rule, prime loans like this would be inappropriately categorized as subprime.

The Interagency Subprime Guidance clearly states "that many prime loan portfolios will contain such accounts," and that the guidance does not apply "to programs targeted to prime borrowers." The distinction of a program as prime or subprime involves looking at all the factors for a program and the type of borrower the program is created for. Other factors would include items such as the maximum loan-to-value ratio allowed, credit score (FICO and/or an internal score card), whether a government or private credit enhancement applies to the loan program, and many others that would result in the loan being part of a prime or subprime program. Instead, under the final LBP rule, prime loans would be inappropriately categorized as subprime as long as a loan contained one or more of the listed factors from the final LBP rule.

Another unintended consequence of the definition (not considered by FDIC in setting the LBP rule) is the impact on lending. If the definitions result in artificially higher levels of subprime or leveraged loans, banks may be forced to limit credit or increase pricing on these loans to reflect their new categorization.

[vii] Similar language was used in the two previous proposals that led up to the final rule. In those cases, the statement is more closely aligned with actual practice, although often only a sampling of loan files is provided to examiners and not aggregated data. Nonetheless, the change in the wording in the definitions under the final LBP rule is way beyond what has been currently captured and provided to primary regulators.

[viii] We note that in other rulemakings, the FDIC has been very conscious of the extra burden placed on banks and has endeavored to ease that burden by relying on data that are currently captured. We commend the FDIC for such efforts and believe the same approach should be applied in this case as well.