American Bankers Association
Building Success. Together.

Mark Tenhundfeld
Senior Vice President
Office of Regulatory Policy
202-663-5042
mtenhund@aba.com

December 6, 2010

Information Collection Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: Proposed Agency Information Collection Activities; Comment Request – Thrift Financial Report: 75 Federal Register 61563; October 5, 2010; TFR Revisions – 2011, OMB No. 1550-0023

To Whom It May Concern:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the proposed revisions to the Thrift Financial Report (TFR),[2] as issued by the Office of Thrift Supervision (OTS). The OTS's proposed revisions to the TFR include several changes and new items to provide additional data that the agency believes are needed for reasons of safety and soundness and to assist the agency's understanding of thrift's credit and liquidity exposures.

ABA supports, with recommended revisions to the TFR and instructions discussed below, the OTS's proposed revisions relating to Assets Covered by FDIC Loss-Sharing (L-S) Agreements. ABA appreciates the OTS's responsiveness to the industry's petition for more granular and transparent reporting information in the TFR for the various categories of assets subject to FDIC loss-sharing agreements entered into by thrifts with the FDIC as a result of an acquisition. As you know, ABA has frequently called for granularity in such instances to aid the users of such data to understand thrift conditions more clearly.

ABA members have expressed no concerns with many of the OTS's proposed revisions. However, we urge the OTS to consider including in the final revisions to the TFR the several changes suggested below to the OTS's proposed revisions. We also offer suggestions on several issues that have not been proposed by the OTS.

- Troubled Debt Restructurings (TDRs): ABA recommends that the OTS defer the proposed TDR revisions, including the new breakdowns by loan category, of loans that have undergone troubled debt restructurings to coincide with the final decision on the pending FASB proposal on TDRs.

---

[1] 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. The majority of ABA's members are banks with less than $165 million in assets. Learn more at www.aba.com.
[2] 75 *Fed. Reg.* 61563 (October 5, 2010).

- Nonbrokered Deposits Obtained Through the Use of Deposit Listing Service Companies: ABA opposes the proposed new Schedule DI items that would require thrifts to report the total amount of deposits and average daily deposits obtained through the use of deposit listing services that are not brokered deposits.

- Deposits of Individuals, Partnerships, and Corporations: ABA opposes the proposed new Schedule DI breakdown into two line items for deposits of individuals, and deposits of partnerships and corporations.

- General, Specific, and Total Valuation Allowances by Major Loan Type: ABA opposes the proposed additional detail for general and total valuation allowances breakout by major loan type in Schedule VA at the end of the current quarter.

ABA believes these suggested changes would still allow the OTS to obtain the meaningful information that they need while avoiding some of the excess regulatory burden borne by thrifts and their customers. These points, as well as additional suggestions for improving the revisions to the TFR, are set forth below, including recommendations on issues that were not included in the OTS's proposed revisions.

Discussion

ABA supports, with recommended revision, the following item:

Assets Covered by FDIC Loss-Sharing (L-S) Agreements.
The OTS proposed to distinguish existing items for loans and leases covered by FDIC loss-sharing agreements by loan and repossessed asset categories in Schedule SI. OTS also proposed a new line in Schedule SI for income received from, or accrued on, assets covered by the FDIC under loss-sharing agreements. Finally, the OTS proposed to break down in Schedule PD reporting of past due and nonaccrual loans to segregate loans and leases covered by FDIC loss-sharing agreements. The reporting of the new breakout of loans and leases covered by FDIC loss-sharing agreements in Schedule PD would include a reporting of these loans and leases using many of the same categories as in proposed revised Schedule SI.

ABA supports the OTS's proposed revisions, with recommended changes set out in the Appendix to this letter. ABA has often advocated the value of additional, more granular information in the TFR for the various categories of assets subject to FDIC loss-sharing agreements. ABA believes that the OTS's proposed revisions, as further revised, will provide a more precise, transparent, and accurate picture of a thrift's asset quality, which will be beneficial to regulators, reporting thrifts, investors, and the public.

ABA has concerns with the following items:

TDRs.
The OTS proposed that thrifts report detailed information on loan categories that have undergone troubled debt restructurings. More specifically, they propose new items to break down by loan category existing TDRs in Schedule VA for the amount of TDRs added in the current quarter and the amount of TDRs included in Schedule SC in compliance with the modified terms; and TDR amounts that are past due and still accruing (30-89 days, 90 days or more) and in nonaccrual status in Schedule PD. Leases would be excluded from the proposed new items.

ABA recommends that the OTS defer the proposed TDR revisions, including the new breakdowns by loan category, of loans that have undergone troubled debt restructurings to coincide with the final decision on the pending FASB proposal on Troubled Debt Restructurings by Creditors.[3] The deferral is important in order for the TFR definition of TDRs to be consistent with the accounting standards for troubled debt restructurings.

ABA opposes and recommends that the OTS not adopt the proposed Schedule VA additional breakouts by loan categories of the amount of TDR during the current quarter, since this aggregate total amount is reported in line VA 940.

Further, if the OTS accepts ABA's recommendation to defer the proposed TDR revisions, if and when the OTS reconsiders a proposed breakout of the information for the TFR, ABA recommends that there be fewer additional data reporting breakout categories in Schedules VA and PD, and align the loan categories in both schedules to be consistent with the proposed categories in the Call Report.

It is onerous to have different data aggregation based on the type of institution – *e.g.*, thrift vs. bank, for institutions that would be required to report this data differently for its thrift than for its bank, especially when the data must be aggregated in the BHC's consolidated FR Y-9C. Consistency in the loan categories for both the Call Report and the TFR would be beneficial. Also, since the Call Report proposed revisions do not break down by loan categories the amount of TDRs during the current quarter, ABA urges consistent treatment by not requiring the proposed inclusion of this information in the TFR.

The term "Troubled Debt Restructurings," as defined by current accounting standards, reflects a population that is not necessarily the same as the regulatory definition of "Restructurings," with the former generally being a subset of the latter. If the proposed TDR revisions are not deferred, there is an increased likelihood that the amount of TDRs reported to the SEC and those reported in regulatory reports will vary and cause confusion to users of the information.

FASB is currently considering changes to the criteria for loan restructurings to qualify as TDRs. ABA recommends that, until FASB finalizes its changes, this proposed change to the TFR be

[3] *See* FASB Proposed Accounting Standards Update: Receivables (Topic 310), Clarifications to Accounting for Troubled Debt Restructurings by Creditors. Comments due: December 13, 2010.

deferred. Further, we also recommend that this proposal be evaluated in light of any new credit quality information required by ASU 2010-20: *Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses* that OTS may wish to include in the TFR. Such new information may diminish the necessity for the specific data requested in this proposal.

In summary, deferring the proposed TDR revisions in the TFR until the FASB revisions on TDRs are finalized would minimize confusion among thrifts and would provide consistent regulatory and FASB definitions and treatment of TDRs.

Nonbrokered Deposits Obtained Through the Use of Deposit Listing Service Companies.
Thrifts would be required to report in two new line items in Schedule DI the total amount of deposits and average daily deposits obtained through the use of deposit listing services that are not brokered deposits. The OTS defines a deposit listing service as a company that compiles information about interest rates offered on deposits, such as certificates of deposit, by insured depository institutions. The OTS also states that a deposit listing service is not a deposit broker (which facilitates the placement of CDs) if all of the four specified criteria[4] are met.

ABA opposes these proposed new items in Schedule DI in which thrifts would report the total amount of deposits and average daily deposits obtained through the use of deposit listing services that are not brokered deposits. There is no practical way for thrifts to track this information, as proposed. As a result, whatever would get reported is likely to be of limited utility to anyone. Neither is it clear what purpose would be served by providing this information if it could be obtained.

Deposits of Individuals, Partnerships, and Corporations.
The OTS proposed a breakdown of the existing item for deposits of individuals, partnerships, and corporations into separate new items for deposits of individuals and deposits of partnerships and corporations in Schedule DI. As a result of this proposed separate reporting of deposits, the OTS also proposed that official checks in the form of money orders and travelers checks be reported as deposits of individuals while all other official checks and certified checks be reported as deposits of partnerships and corporations.

ABA opposes this new breakout of separate line items for deposits of individuals, and deposits of partnerships and corporations on Schedule DI and recommends that the OTS not adopt this proposed breakout of deposits. The proposed detailed breakout of the source of deposits would

[4] *See 75 Fed. Reg*. 61566- 61567 (October 5, 2010). Criteria generally include: (1) the provider of the listing service is compensated solely by subscription fees (*i.e.,* the fees paid by subscribers as payment for their opportunity to see the rates gathered by the listing service) and/or listing fees (*i.e.,* the fees paid by depository institutions as payment for their opportunity to list or “post” their rates); (2) fees paid by a depository institution are flat fees; (3) in exchange for these fees, the listing service performs no services other than (a) gathering and transmitting information on the availability of the deposits; and/or (b) transmitting messages between depositors and depository institutions; and (4) the listing service is not involved in placing deposits.

be too labor-intensive for some thrifts that do not currently track these deposit source categories; thus, the costs would outweigh the benefit of reporting the additional data.

However, if the OTS does not retain the current consolidated reporting of deposits, and instead adopts this new breakout on Schedule DI, ABA recommends that the OTS defer until **March 31, 2012**, the implementation of this new breakout of separate line items for deposits of individuals, and deposits of partnerships and corporations. The proposal would require significant system programming changes for some thrifts to track and break out the sources of deposits, as proposed. Deferring the reporting this new data until the March 31, 2012, TFR would provide needed time for thrifts to make system modifications necessary to capture these new tracking data. This would also be consistent with the OTS's preferred time for implementing TFR revisions, which typically occur at the end of the first quarter of the calendar year.

ABA recommends that if the source of deposits is broken out between (a) individuals, and (b) partnerships and corporations, an operationally more workable approach for thrifts would be to report all official and certified checks in one of the proposed new breakout categories rather than splitting them between the two new proposed categories. Thus, ABA recommends reporting all such checks in the category of deposits of partnerships and corporations, since for some thrifts, most of these official and certified checks would be used by partnerships and corporations rather than individuals.

<u>Variable Interest Entities</u>.
The OTS proposed to add a new Schedule VIE – Variable Interest Entities (VIEs), to the TFR to report a breakdown of the assets of consolidated VIEs that can be used only to settle obligations of the consolidated VIEs, and liabilities of the consolidated VIEs for which creditors do not have recourse to the general credit of the financial institution. The assets and liabilities would be separately reported for securitization trusts, asset-backed commercial paper conduits, and other VIEs. The OTS also proposed that thrifts would report total assets and total liabilities of other consolidated VIEs for which the breakdown of assets and liabilities previously described is not reported.

ABA urges the OTS consider the burden this new reporting Schedule VIE will have on smaller thrifts and consider whether some relief from compliance with this new Schedule should be given to smaller thrifts to lessen the burden.

<u>Life Insurance Assets</u>.
The OTS proposed new items for reporting "General Account Life Insurance Assets" and "Separate Account Life Insurance Assets" on Schedule SC, Bank-Owned Life Insurance (BOLI), for both Key Person Life Insurance and Other BOLI Not Considered Key Person Life Insurance.

ABA recommends that the OTS include a third reporting breakdown of existing BOLI items on Schedule SC for "Hybrid Account Life Insurance Assets," which is an emerging BOLI product. Since this product combines features of both General Account and Separate Account products, it may be beneficial it report this hybrid product as a separate line item classification on Schedule SC.

Trust Preferred Securities.
The OTS proposed to add two new line items in Schedule SC for reporting Trust Preferred Securities, including "Trust Preferred Securities Issued By FDIC-Insured Depository Institutions or Their Holding Companies" and "Other Trust Preferred Securities."

ABA supports these proposed revisions with a recommendation. Regarding the proposed approach for reporting trust preferred securities issued by FDIC-Insured Depository Institutions or Their Holding Companies, ABA recommends that instructions clarify the reporting for Single-Issuer or Pooled Securities. ABA recommends that all Pooled Trust Preferred securities be reported as "Other Trust Preferred Securities," as many pooled transactions may also include Insurance Company Issuers.

The clarification of reporting would minimize confusion among thrifts and would provide consistency and interpretation of reported amounts.

General, Specific, and Total Valuation Allowances by Major Loan Type.
The OTS proposed more detailed breakdown in Schedule VA by loan type for general, specific, and total valuation allowances at the end of the current quarter in order to understand reserve activity within thrift loan categories.

ABA opposes this proposed additional detailed breakdown of general and total valuation allowances and recommends that these proposed new items not be included in the final OTS revisions.

Some thrift members' loan loss reserve does not have the level of detail to provide this breakout. For example, a thrift may have one category of consumer loans but not have detail more granular than that one level. Further, the thrift may not have enough historical losses to build a loss history that provides a reasonable method for calculating a loan loss reserve at a level more granular than one category of consumer loans.

Thus, ABA urges the OTS to not require the new breakdown for general and total valuation allowances at the level of detail requested. The proposed additional reporting would require thrifts to do additional allocations of loss reserves at levels that are probably not meaningful.

Proposed additional items that are not included the agencies' proposal:

Permanent Increase in the Amount of the Deposit Insurance Coverage to $250,000 by the Dodd-Frank Act.
ABA recommends that the OTS revise and update the TFR, as needed, to eliminate references to deposit insurance coverage that are no longer needed due to the permanent increase in the standard maximum deposit insurance amount to $250,000.[5] There are items in the TFR that require thrifts to identify deposits between $100,000 and $250,000. If these deposits are not

[5] *See* Section 335, Permanent Increase in Deposit and Share Insurance, Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (July 21, 2010).

obtained using a deposit broker, we see no reason to distinguish them on the TFR. They are as much a "core" deposit as any other that is obtained from within the thrift's market. The permanent increase of deposit insurance to $250,000 removes the need to continue distinguishing between different amounts of core deposits. The references to "$100,000" are vestiges from law that has since been changed and should now be updated in the TFR.

Schedule DI, Consolidated Deposit Information.
ABA recommends that the OTS revise and update Schedule DI, as needed, to eliminate items that are no longer necessary in light of the new method for calculating the deposit insurance assessment base, as required by the Dodd-Frank Act[6] so it is appropriate for the revised assessment base.

ABA questions the status of Schedule DI of the TFR, given the recent proposal issued by the FDIC to revise the deposit insurance assessment calculation pursuant to the Dodd-Frank Act. Since the FDIC assessment will be asset-based in the near future, ABA anticipates changes being necessary to Schedule DI. ABA requests that the OTS provide ample time for comments on any proposal issued to address the change in reporting requirements.

Conclusion

ABA appreciates the opportunity to comment on the proposed revisions included in the TFR Notice and Request for Comment and the additional issues raised in our comments.

Please contact the undersigned at (202) 663-5042 or mtenhund@aba.com if you have any questions. Thank you for considering our comments and recommendations.

Sincerely,

Mark Tenhundfeld

---

[6] *See* Section 331, Deposit Insurance Reforms, Dodd-Frank Act, wherein the revised assessment base for an insured depository institution is "an amount equal to (1) the average consolidated total assets of the insured depository institution …; minus (2) the sum of (A) the average tangible equity of the insured depository institution …, and (B) in the case of an insured depository institution that is a custodial bank … or a banker's bank … an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act … for a custodial bank or a banker's bank."

Appendix
ABA Recommendations Relating to Assets Covered by FDIC Loss-Sharing Agreements

OTS Proposed Revisions to Schedule SI:

Proposed OTS new breakdown of line SI 770 (Loans and Leases) would add more granular line items, SI 771 – SI811. This breakdown provides more granular and transparent reporting on assets covered by FDIC loss-sharing agreements.

<u>ABA recommendation on OTS's Proposed Schedule SI revisions</u>:

- ABA supports the OTS's proposed revisions which would provide more accurate and transparent reporting of assets covered by FDIC loss-sharing agreements.

- However, proposed new line item SI 810 – "Guaranteed amount of total amount of covered real estate owned" is confusing. Thus, ABA recommends that OTS not adopt this proposed new line item in its current form.

OTS Proposed Revisions to Schedule PD:

Proposed OTS revisions to Schedule PD would add new lines PD 515 – 796[7] (*see also* draft TFR for March 31, 2010 – pages 15-17).

<u>Suggested recommendation on Schedule PD revisions</u>:

- ABA generally supports the OTS's proposed revisions, including the additional line item breakouts, which would provide more accurate and transparent reporting of assets covered by FDIC loss-sharing agreements.

- However, ABA recommends the following revisions to proposed Schedule PD:

    - Add new lines PD 136 and 137[8] to be consistent with the new breakout on lines PD 536 and 537, and 836 and 837, which breaks out "Nonresidential Property (Except Land)" into "Owner-Occupied Nonresidential Property" and "Other Nonresidential Property," respectively.

    - For the same reasons, add to Schedule SC, new lines SC 261 and 262 to be consistent with the breakout on lines PD 536 and 537, and 836 and 837 which

[7] The proposed new line items in the Federal Register notice on page 61568 do not match with the proposed new line items for Schedule PD in the Proposed March 2011 TFR form, so the references below also track the line items in the proposed March 2011 TFR.
[8] For each of the suggested additions or deletions of line items noted in our recommendations, each recommendation would include the corresponding line items for past due and nonaccruals items for the same line item for Schedule PD.

breaks out "Nonresidential Property" into "Owner-Occupied Nonresidential Property" and "Other Nonresidential Property," respectively.

   - This breakout is a significant issue for loan concentration.

- ABA recommends that the OTS not adopt the new breakout in lines PD 541 and 542, and 841 and 842, which break out "Commercial Loans – Total" into "Secured" and "Unsecured" new line items in the Memoranda. This is not similarly broken out in line PD 140. We urge the OTS to remain consistent with line PD 140 (Total).

- ABA opposes and recommends that the OTS not adopt the new breakout in line PD 545 and 843, "Credit Card Loans Outstanding- Business," which is a subset of the combined line PD 171 "Credit Cards," which would include business and consumer credit cards. These Memoranda items are not necessary for reporting loss-sharing assets.

- ABA opposes and recommends that the OTS not adopt new line PD 845, Lease Receivables. This category is unnecessary since it covers a minimal amount of FDIC loss-sharing assets.

- ABA opposes and recommends that the OTS not adopt new lines PD 861- 880, which break down detailed consumer loan categories, and retain the "Consumer Loans – Total" line item "Sub XXX." ABA believes the additional breakdown of this category is unnecessary since it covers a minimal amount of FDIC loss-sharing assets.

- ABA recommends that the OTS clarify proposed new line PD 896, Guaranteed amount of total amount of Covered past due and nonaccrual Loans and Leases. Similar to our comment on Schedule SI 810, this line item is confusing.

Other issues not included in the OTS Proposed Revisions:

Schedule VA (*See* page 14 of the Draft TFR for March 31, 2011):

- Classified assets: ABA recommends adding a new line VA 961, 966, 971, and 976, "Classified Assets Covered by Loss-Sharing Agreements – Total." This would be a subset of the prior lines VA 960, 965, 970, and 975 "Classification of Assets – Total." This would be similar to the breakout of past due assets.

Instructions (previously requested by the ABA)

Since the proposed instructions for March 31, 2011, are not yet available, ABA reaffirms its prior requested changes to TFR instructions for Schedule SC, which are as follows:

- Schedule SC – Consolidated Statement of Condition: Items SC691, SC693, and SC697 (Other Assets, Memo: Detail of Other Assets - Code):

  Add a new Code in the Instructions for these line items to be titled "FDIC Indemnification Assets."

  This would provide clarification for the largest other asset that would include only FDIC receivables attributable to bank acquisitions. The only appropriate code currently in place is "99-Other. Use this code only for those items not identified above."

- Schedule SC – Consolidated Statement of Condition: Item SC429 (U.S. Government-Guaranteed or -Insured Real Estate Owned):

  Add at the end of the Instruction for this line item following the term "U.S. government" the following: ", including repossessed property covered under FDIC loss-sharing agreements."