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Washington, DC 20036

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Kathleen P. McTighe
Senior Counsel
Office of Regulatory
Policy
Phone: 202-663-5331
Fax: 202-828-5047
kmctighe@aba.com

January 22, 2010

Submitted Via E-Mail

Office of Information and Regulatory Affairs
Attention: Desk Officer for OTS
U.S. Office of Management and Budget
725 17th Street, NW
Room 10235
Washington, DC 20503

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

Re: Submission for OMB Review; Comment Request – Thrift Financial Report:
Schedules SC, CC, DI, SI, SB and RM: 74 Federal Register 68326; December
23, 2009; TFR Revisions-2010, OMB No. 1550-0023

To Whom It May Concern:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Notice and Request for Comment on revisions to the Thrift Financial Report (TFR),² as issued by the Office of Thrift Supervision (OTS) (the Agency). ABA's comments are limited to the Agency's revisions to the TFR relating to "Assets Covered by FDIC Loss-Sharing Agreements."³ These revisions will be implemented by the Agency effective March 31, 2010.

ABA recommended to the Agency in response to its August 19, 2009, proposed revisions to the TFR⁴ that it collect information from institutions that

¹The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.5 trillion in assets and employ over 2 million men and women.

² 74 *Fed. Reg.* 68326 (December 23, 2009).

³ *See id.*, at 68330 – 68331, Section III. G., Assets Covered by FDIC Loss-Sharing Agreements.

⁴ 74 *Fed. Reg.* 41981 (August 19, 2009).

acquire assets of a failed depository institution that are covered by a FDIC loss-sharing agreement. These changes were requested to address an issue of increasing importance to thrifts that enter into loss-sharing agreements with the FDIC as a result of an acquisition. As the Agency states in the Notice and Request for Comment, the FDIC has entered into loss-sharing agreements with acquiring institutions in connection with approximately 80 failed bank and thrift acquisitions over the past year, and continued use of FDIC loss-sharing agreements is expected relating to resolutions of failed insured institutions.⁵

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

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

While these changes are a step in the right direction, ABA believes it would be beneficial to regulators, reporting institutions, investors, and the public to have additional, more granular information about the various categories of assets subject to the FDIC loss-sharing agreements. While we recognize that this would result in additional reporting burden on institutions, on balance our members feel strongly that the benefit of additional disclosure of loss-sharing data would outweigh the burden of providing this detailed data. Thus, we urge the Agency to further revise the collection of data from institutions on assets covered by FDIC loss-sharing agreements on the TFR to include the several changes suggested below.

⁵ *Supra*, note 2, at 68330.

⁶ *Id.*

⁷ *Id.*

Set forth in the Appendix to this letter are several recommended changes to the TFR and related instructions. We believe these changes would provide a more precise and accurate picture of an institution's asset quality.

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

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

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

Sincerely,

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

Kathleen P. McTighe
Senior Counsel

Appendix

Proposed changes to the TFR:

Schedule SI – Consolidated Supplemental Information: New items included in lines SI770, SI772, SI774, and SI776. Assets covered by FDIC Loss-Sharing Agreements: Carrying Amount of Covered:

New line SI770 Loans and Leases:

- Replicate and add as part of new line SI770 all the detailed information included in the following lines of Schedule SC – Consolidated Statement of Condition:
 - Line SC26 and all the sub items of this line, including lines SC230 – SC283; and
 - Line SC31 and all the sub items of this line, including lines SC32 – SC357.

Schedule PD – Consolidated Past Due and Nonaccrual:

- Revise the Memoranda caption for line items PD195, PD295, and PD395 to read as follows: “Loans and Leases Reported in PD115 - PD380 That Are Wholly or Partially Guaranteed By the U.S. Government, Agency, or Sponsored Entity (excluding those loans and leases covered by FDIC Loss-Sharing Agreements)”;
- Add new Memoranda line items PD194, PD294, and PD394 with the Memoranda caption to read as follows: “Loans and Leases Reported in PD115 – PD380 That Are Wholly or Partially Covered By FDIC Loss-Sharing Agreements.”.

Proposed changes to TFR Instructions:

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

Add an additional new Code in the Instructions for these line items to be titled “FDIC Indemnification Assets”.

This would provide clarification for the largest other asset which 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.”.

Schedule SI – Consolidated Supplemental Information: New Item SI776: Other Assets:

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

There also appear to be a few minor typographical errors on the references to SI770, SI772, and SI774.

Schedule CCR – Consolidated Capital Requirement: Item CCR450 (Risk Weight Categories: 20% Risk-Weight: Other):

Add to the end of the instructions for line CCR450 the following: “7. The carrying amount of any loans and leases, real estate owned, debt securities, and other assets, including the FDIC indemnification asset, that are covered by FDIC loss-sharing agreements.”.

We note that TFR instructions for Schedule CCR, line CCR409, Notes and Obligations for FDIC, Including Covered Assets, state in the second sentence, “Include the portion of assets **fully** covered against capital loss and/or yield maintenance agreements by the FDIC.” Since line CCR409 is included in the 0% Risk-Weight category, this appears to be inconsistent with the guidance given by the Agency and the ABA revision above if such assets should be included in the 20% risk-weight category. Thus, we request the Agency to clarify if and how this would relate to the risk-weight of assets covered by FDIC loss-sharing agreements.

Schedule CCR – Consolidated Capital Requirement: Item CCR409 (Risk Weight Categories: 0% Risk-Weight: Notes and Obligations of FDIC, Including Covered Assets):

Add to the end of the instructions for line CCR409 the following: “Also include the carrying amount of any prepaid deposit insurance assessments reported in Schedule SC, line SC689 (Other Assets).”

While this revision does not relate to the FDIC loss-sharing issue, we urge the Agency to make this clarification for zero percent risk weight for prepaid deposit insurance assessments in the instructions to line CCR409. This is consistent with the FDIC’s Final Rule on Prepaid Assessments.⁸

⁸ See FDIC Final Rule on Prepaid Assessments, November 17, 2009, located at: <http://www.fdic.gov/regulations/laws/federal/2009/09finalAD51Nov17.pdf>