



April 6, 2021

Via Electronic Mail

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Re: Call Report and FFIEC 002 Deposit-Related Revisions

To Whom it May Concern:

The Bank Policy Institute, the Securities Industry and Financial Markets Association, and the American Bankers Association (collectively, the Associations)¹ welcome the opportunity to comment on the proposal by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency regarding revisions to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051).² The Associations understand the agencies' need to evaluate the behavior of sweep accounts in order to determine their appropriate treatment under liquidity regulations and are generally supportive of the agencies' further research into and analysis of funding stability and the behavior of bank counterparties over time. However, firms have concerns with the proposed new reporting items, specifically that the revisions are duplicative of existing reporting requirements for many firms, as well as the proposed implementation timeline. Our other comments herein highlight areas of the proposal related to the reporting treatment

¹ See Appendix 1 for a description of the Associations.

² 86 Fed. Reg. 8480 (February 5, 2021).

of certain deposits consistent with changes in the brokered deposits final rule³ and definitions that require further clarification from the agencies.

I. Firms that report data on sweep deposits in the FR 2052a should not be required to provide comparable data in the Call Report.

In connection with the final rule implementing the Net Stable Funding Ratio⁴ and the Brokered Deposits Final Rule, the proposal would collect data on sweep deposits and on sweeps that received a primary purpose exemption under the recently modernized brokered deposit framework. Specifically, the proposal would add five memorandum items, regarding insured and partially insured sweep deposits, to Schedule RC-E, which is collected quarterly on the FFIEC 031 and FFIEC 041 and semiannually on the FFIEC 051. Additionally, four data items, related to sweep deposits for different types of counterparties, would be added to Schedule RC-E of the FFIEC 031 only and would be completed quarterly by institutions with \$100 billion or more in total assets. Many of the firms to which these proposed requirements would apply, are currently required to file the FR 2052a that provides the agencies with detailed liquidity data, including the critical data elements of these newly proposed memorandum items of the Call Reports. As a result, such firms already provide the agencies with data on sweeps deposits, on both a more frequent and a more granular basis than the proposed new items would require. Requiring those firms that are currently subject to FR 2052a reporting to also submit substantially similar data on the Call Reports would be duplicative and would create unnecessary burden for respondent firms.⁵

The proposal states that this new collection of data is being introduced in an effort to “obtain data that will assist in better evaluations of funding stability for sweep deposits over time to determine their appropriate treatment under applicable liquidity regulations and to assess the risk factors.”⁶ However, as noted on the Federal Reserve’s website, the FR 2052a is “used to monitor an individual organization’s overall liquidity profile for institutions supervised by the Federal Reserve. These data also provide detailed information on the liquidity risks within different business lines [...] In particular, the data serve as part of the Federal Reserve’s supervisory surveillance program in its liquidity risk management area and provide timely information on firm-specific liquidity risks during periods of stress.”⁷ While not all institutions subject to the Call Reports also file the FR 2052a, the institutions that file both reports make up a significant portion of the balances of sweep deposits, which should provide the agencies with sufficient insight into the stability and behavior of these deposits.

³ 86 Fed. Reg. 6742 (January 22, 2021) (hereafter, the Brokered Deposits Final Rule).

⁴ 86 Fed. Reg. 9120 (February 11, 2021) (hereafter, the NSFR Final Rule).

⁵ Additionally, we note that under the Paperwork Reduction Act as a part of the Federal agency responsibilities, there is a requirement that each collection of information submitted for review “is not unnecessarily duplicative of information otherwise reasonably accessible to the agency.” See 44 U.S. Code § 3506(c)(3)(b).

⁶ 86 Fed. Reg. 8480 at 8484.

⁷ See Board of Governors of the Federal Reserve System, FR 2052a <https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDbpqbklRe3/1zdGfyNn/SeV>.

An additional consideration is that the data that firms supply on the Call Report is made available to the public, whereas the comparable FR 2052a reporting on sweeps deposits receives confidential treatment. When combined with additional information that is expected to be made available from the FDIC in connection with the Brokered Deposits Final Rule, this public disclosure of information that was previously collected confidentially could result in unnecessary harm to respondents by giving users the ability to potentially determine proprietary information, as discussed in Section II below.

We therefore recommend that the agencies not proceed with implementation of the new items in the Call Reports to collect data on sweeps deposits for those institutions that already report such items on the FR 2052a. As the critical data elements of the proposed Call Report memorandum items are already collected in the FR 2052a, to the extent that the agencies feel that there is information that is not available to them on the 2052a, we would urge the agencies to consider modifications to that form instead of seeking further data collection on the Call Reports.

II. The proposed Call Report memorandum items should receive confidential treatment, consistent with the treatment of comparable data items provided on the FR 2052a, by extending the existing exceptions to public disclosure of Call Report information.

As noted in section I above, data provided on the Call Reports are generally made available to the public and published on the FFIEC's Central Data Repository Public Data Distribution website, with certain exceptions noted in the general instructions.⁸ Outside of these exceptions listed in the instructions, in order for institutions to receive confidential treatment for certain data provided, they must submit a request in writing providing the justification for the confidential treatment and describe the specific nature of the harm that would result from such data being made public.⁹ The proposal does not make any reference to the proposed Call Report memorandum items being treated confidentially, and therefore such data would be made public consistent with current practices, absent individual requests from firms. However, firms are concerned that publication of the new Call Report memorandum items, combined with public disclosure of information associated with the primary purpose exception notices as a product of the Brokered Deposits Final Rule, will give market participants access to potentially proprietary information.

Under Section 29 and the FDIC's implementing regulations, there are several exceptions to the definition of "deposit broker" one of which is the "primary purpose exception," which applies to agents or nominees whose "primary purpose is not the placement of funds with depository institutions."¹⁰ The Brokered Deposits Final Rule narrowed the definition of "deposit broker" and expanded the existing exceptions, including the primary purpose exception, by establishing several business relationships that are considered to be "designated exceptions" that meet the primary purpose exception.¹¹ If a third party does not meet one of the designated exceptions, it can still apply to the FDIC to qualify for primary

⁸ See FFIEC, Instructions for Preparation of Consolidated Reports of Condition and Income FFIEC 031 and FFIEC 041 (updated December 2020) at page 14, *available at* https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202012_i.pdf.

⁹ See *id.*

¹⁰ 86 Fed. Reg. 6742 at 6748.

¹¹ *Id.* at 6750-6751.

purpose exception. While many of the “designated exceptions” do not require any form of notice or reporting, there are two designated exceptions for which notice is required. If a third party seeks to rely on these two designated exceptions, such third party or the insured depository institution that is receiving deposits from the third party, must submit a written notice to the FDIC and comply with applicable reporting requirements.

As noted in its recent webinar on the Brokered Deposits Final Rule, the FDIC stated that it will be publishing primary purpose notices on its website, specifically the entities and business lines for which a valid notice has been received.¹² As a result, all brokered sweeps arrangements for which applications for the primary purpose exception are submitted, including affiliate applications as well as those of third parties, would be published on the FDIC website. While aspects of the notices may be redacted when posted to the FDIC website, taken together with the publication of the granular information in the proposed Call Report items, such disclosure has the potential to afford analysts and the public significant insight into the movements, trends, and fluctuations of firms’ sweep and brokered deposits. As new notices are posted on the FDIC website over time, combined with the ongoing disclosure of the proposed Call Report memorandum items, it may be possible to ascertain the increases in average balances reported that are attributable to a particular notice by an institution. This insight may result in analysts and other market participants having proprietary information or making incorrect assumptions about a banking organization’s business strategies without an appreciation for the context in which these data are reported, which could ultimately harm a bank’s competitive positions. Similarly, it is possible to obtain proprietary affiliate information that could be utilized by competitors to gauge the size of an institution’s wealth management portfolio. These potential negative effects could be avoided by requiring banks to provide such information to their supervisors, through the FR 2052a for those that report on such form, which would result in supervisors still obtaining the desired information without the potential for harm that could result from public disclosure.

We therefore recommend that the proposed memorandum items receive confidential treatment, consistent with the treatment of comparable items currently reported on the FR 2052a, by extending the existing exceptions to the Call Report public disclosure with indication as such on the face of the form or in the instructions. This would continue to allow the agencies to disclose the information in aggregate form in such a manner that individual company data is not disclosed or derivable, consistent with those exceptions described in the Federal Reserve’s Rules Regarding Availability of Information.¹³

III. Implementation of the proposed data items should be delayed until the March 30, 2022 report date.

As proposed, the new reporting requirements would take effect for reporting as of June 30, 2021, leaving less than one quarter for those firms that would be subject to the new collection to make the necessary systems changes to capture the relevant data. Further, final instructions and modifications to the form to reflect additional changes after the agencies’ review of public comments will not be available until after the agencies’ issue a final rule. As with any new regulatory frameworks

¹² See FDIC Industry Webinar: Brokered Deposit and Interest Rate Restrictions Under Revised Sections 337.6 and 337.7 available at <https://www.fdic.gov/news/financial-institution-letters/2021/fil21014a.pdf>.

¹³ See 12 CFR Part 261.17 (d)(1).

and related reporting changes, the industry and its stakeholders will need time to understand the rules and required reporting in order to proceed with implementation. This is particularly true under the revised brokered deposit regime, which went into effect starting on April 1, 2021 and requires banks or third parties to file a notice or application under the primary purpose exemption.¹⁴ The FDIC noted during its recent webinar to discuss the Brokered Deposits Final Rule, that while it will begin reviewing applications as soon as possible, this review may not begin until September. The Brokered Deposits Final Rule also permits up to 120 days for the FDIC to provide a written determination on applications for primary purpose exception, with the option to extend this timeframe up to 120 additional days.¹⁵ As a result, it does not seem likely that one quarter provides sufficient time for both the FDIC to make a determination on the pending applications or for banks to adjust their systems after a determination is made. Additionally, the proposed revisions to the Call Reports would require firms to make systems changes, and to perform the necessary testing and subject the reporting to firms' existing control and review processes. Even firms with existing systems in place to report comparable data, such as those firms that file the FR 2052a, will need time to make adjustments to reporting systems from an IT standpoint, as well as the relevant updates to controls to report the data items on the Call Reports if such firms are in fact required to complete these new data items.

In order to allow time for the initial primary purpose exception application process to be completed, while also affording firms the time to make the systems changes needed for the new data collection, we recommend that the agencies delay implementing any changes to the Call Reports related to the reporting of sweep deposit data until the March 31, 2022 as-of date.

IV. The agencies should confirm that firms are permitted to incorporate the new brokered deposits regime for purposes of reporting beginning with the June 30, 2021 as-of date, even if such firms are still in the midst of the primary purpose exception application process.

The proposal states that there will be two sets of Call Report instructions allowing institutions to either: "(1) comply with the new regulation starting on the June 30, 2021, report date; or (2) continue to rely upon existing FDIC staff advisory opinions or other interpretations that predated the brokered deposits final rule in determining reporting brokered deposit data in the Call Report through the December 31, 2021, report date"¹⁶ in order to accommodate the extended compliance timeline permitted in the Brokered Deposits Final Rule until January 2022. However, only a single version of draft instructions is available as of the close of the comment period and does not specify how institutions should report deposits under the revised brokered deposits regime during this transitional period prior to the extended compliance date in the Brokered Deposits Final Rule.

As noted in Section I above, effective April 1, 2021, certain deposits will no longer be considered brokered in accordance with the Brokered Deposits Final Rule due to the several statutory exceptions for brokered deposits, including the primary purpose exception. Despite this certainty provided in the Brokered Deposits Final Rule, additional entities will be undergoing the application process for the primary purpose exceptions and awaiting a determination by the FDIC. However, the instructions do not provide any guidance with respect to reporting during this transitional period prior to the extended

¹⁴ See 86 Fed. Reg. 6742.

¹⁵ 86 Fed. Reg. 6742 at 6789.

¹⁶ 86 Fed. Reg. 8480 at 8486 (emphasis added).

compliance date for the Brokered Deposits Final Rule to January 1, 2022. For example, if implementation is not delayed as requested in Section II above, it is unclear how a firm should complete the Call Report for the June 30, 2021 report date if the firm is operating under the new brokered deposit framework but will still be undergoing the application process to determine whether certain third party sweep deposits would be approved under the primary purpose exception.

Specifically, it is unclear if in their Call Report filing, firms are immediately allowed to exempt deposits for which the statutory exceptions would apply and do not require an application, while over time on future filings, incrementally excluding deposits that receive approval from the FDIC for their applications under the primary purpose exception. Without further clarification of the agencies' expectations for the reporting treatment during this transitional period, interpretations may vary from bank to bank and as a result of differences in reporting practices would prevent comparisons across the industry and could impede the agencies' ability to monitor and evaluate the behavior of certain sweep deposits.

We therefore recommend that the agencies confirm that firms may begin applying the statutory exceptions to the treatment of deposits as outlined in the Brokered Deposits Final Rule on the Call Report as of the June 30, 2021 report date, even if the application process for primary purpose exceptions is still underway. We further recommend that firms are permitted to cease reporting those deposits that are granted approval on their application under primary purpose exception in the future as brokered, as the FDIC continues to review applications.

V. Clarification is needed with respect to the definition of “not fully insured” as it would apply to the new Call Report memorandum items.

Many of the proposed memorandum items in the Call Report Schedule RC-E would require firms to report data on various sweep deposits that are “not fully insured;” however, neither the draft instructions, nor the current Call Report instructions provide a definition for “not fully insured.” Further, in the background section of the proposal on the NSFR Final Rule, it refers only to “partially insured” sweep deposits.¹⁷ As a result, firms would appreciate additional clarity on the definition of “not fully insured,” such as whether such term includes only partially insured deposits or also includes fully uninsured deposits. We therefore recommend that the term be clarified, and we further recommend that the agencies consider the FR 2052a “Insured” field definitions, which included “FDIC,” “Other,” and “Uninsured,” and application of the same to the proposed Call Report line items, to allow for consistency across reports.¹⁸

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¹⁷ See 86 Fed. Reg. 8480 at 8483.

¹⁸ The FR 2052a data submission contains an Insured field to identify sweep deposits as either:

FDIC – Refers to deposits fully insured by FDIC deposit insurance.

Other – Refers to deposits that are fully insured by non-US local-jurisdiction government deposit insurance.

Uninsured – Refers to deposits that are not fully insured by FDIC deposit insurance or other non-US local-jurisdiction government deposit insurance and uninsured deposits.

The Associations appreciate the opportunity to comment on the proposal. If you have any questions, please contact the undersigned at Alix.Roberts@bpi.com, Cstefansson@SIFMA.org, or Atouhey@aba.com.

Respectfully submitted,



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Appendix 1

The Bank Policy Institute

The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

The Securities Industry and Financial Markets Association

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

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