April 24, 2023

Via Electronic Mail

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Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, D.C. 20219

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
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Attn: Comments, Room MB-3128
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington D.C. 20429

Re: Call Report and FFIEC 002 Revisions OMB Control No: OCC 1557-0081, FRB 7100-0036, FDIC 3064-0052 and FR Y-9 Report Revisions OMB Control No: 7100-0128

To Whom It May Concern:

The Bank Policy Institute[1] welcomes the opportunity to respond to the joint notice and request for comment 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

[1] 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.

Reports of Condition and Income (Call Reports),[2] as well as the notice and request for comment by the Federal Reserve regarding revisions to the Financial Statements for Holding Companies (FR Y-9).[3]

BPI is generally supportive of the proposed revisions to the Call Reports and FR Y-9C. Our comments herein are intended to increase the utility of these reports to users by providing increased granularity with respect to the reporting of structured financial products, and to decrease the burden on filers of the reports through the elimination of line items that are no longer applicable. Additionally, in light of the recently issued Supplemental Instructions to the Call Report and FR Y-9C, we are providing comments on the regulatory reporting treatment of modifications to borrowers experiencing financial difficulty (MBEFD), which has replaced troubled debt restructurings (TDR) reporting.

I. The FR Y-9C and Call Reports should be updated to include an additional breakdown for Structured Financial Products that would distinguish products guaranteed by U.S. government or government sponsored agencies, and products without such a guarantee.

The Call Report notice requests comments on the reporting of certain types of structured financial products, including those issued or guaranteed by the U.S. Government or government sponsored agencies (USG Guaranteed). In the June 2022 Call Report instruction update[4] and March 2022 FR Y-9C instruction book update,[5] the Agencies clarified that USG Guaranteed structured financial products should be included in Schedule HC-B/RC-B item 5.b. Prior to this change, firms were generally reporting these products, such as Freddie Mac K and Q deals, in Schedule HC-B/RC-B line item 4.c.2.a, “Other CMBS issued or guaranteed by U.S. Government agencies or sponsored agencies.” BPI is supportive of the current reporting of these products on item 5.b of Schedule HC-B/RC-B as described in the Agencies’ clarifications and believes this is preferable to reporting such products in line item 4.c.2.a. However, this reporting also combines these products with other structured financial products that are not USG Guaranteed. As a result, there can be a lack of transparency about the composition of reported structured financial products, which can lead to confusion and unfair risk assessment by external entities such as credit rating agencies, investment banks and other regulatory report users.

Previously, these products were reported in a distinct line item for USG Guaranteed products, and as a result, external users of these reports were able to have proper insight into these products and credit rating agencies had more granular information to provide appropriate risk ratings. Generally, USG Guaranteed structured financial products provide assurances that these products hold lower levels of risk than those structured financial products without such guarantees. Rating agencies and other external parties use FR Y-9C data to calculate Risk Adjusted Capital, which in turn can impact an institution’s credit rating. Following the implementation of the March 2022 clarification to the FR Y-9C,

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[2] 88 Fed. Reg. 10644.

[3] 88 Fed. Reg. 18315.

[4] Federal Reserve, *June 2022 Call Report Instructions,* available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202206_i.pdf.

[5] Federal Reserve, *March 2022 FR Y-9C Supplemental Instructions,* available at: https://www.federalreserve.gov/apps/reportingforms/Download/DownloadAttachment?guid=c24ef62f-573c-4929-b26a-3a0900c0781a.

several report filers indicated they had received a greater degree of questions and confusion from rating agencies and equity analysts, as the regulatory report user community was unsure whether the risk profile of institutions' structured financial products portfolios may have increased as a result of this reporting change. Rather than being designated as a USG Guaranteed commercial mortgage-backed security, these products are now being reported alongside products with different risk profiles, such as CLOs and ABS. This result is noteworthy because the instructional clarification may have inadvertently reduced the transparency of the overall risk profile of reporting institutions.

As the Federal Reserve notes, the FR Y-9C is the most widely requested and reviewed report at the holding company level and used by external entities to assess risk and balance sheet quality.[6] Uncertainty or confusion in the reporting of structured financial products could impact the way a firm is perceived in the market. This could result in downgrades in credit ratings, increased borrowing costs, or could impact firms' demand for holding these types of assets. While we agree that the reporting of these products on the FR Y-9C and Call Report should be reported in Schedule HC-B/RC-B, Securities, item 5.b, "Structured financial products", the current practice of reporting all structured financial products on a single line item irrespective of USG Guarantee made these filings less transparent and created confusion in the financial community.

We believe it would be appropriate for an additional breakdown be added to Schedule HC-B/RC-B 5.b delineating USG Guaranteed structured financial products, and those without such guarantees, comparable to the breakdown that exists in Schedule HC-B/RC-b line Item 4.b. Further, we believe this distinction would be appropriate to include in other regulatory reports in which USG Guaranteed structured financial products are disclosed. Disaggregating these items would serve to allow external users of these reports to better understand which types of structured financial products are held by firms and therefore have additional, useful information without a significant increase in burden for preparers of these reports.

II. The regulatory reporting of MBEFDs on the Call Reports and FR Y-9C should affirm a 12-month reporting period, conforming with US GAAP.

Accounting Standards Update No. 2022–02[7] eliminated the recognition and measurement guidance for TDRs for institutions that have adopted the Current Expected Credit Losses methodology and introduced new disclosure requirements for MBEFDs. Prior to the adoption of CECL, a TDR had a different credit loss recognition measurement than other loans; however, under CECL, all loans are measured under a lifetime loss recognition model and therefore separate TDR accounting is no longer needed. The new FASB standard requires the disclosure of the type and financial effect of MBEFDs for the current reporting period, and receivable performance in the 12 months after a modification.[8]

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6 *See* Federal Reserve, *FR Y-9C Consolidated Financial Statements for Holding Companies,* available at https://www.federalreserve.gov/apps/reportingforms/Report/Index/FR_Y-9C.

7 FASB, *Accounting Standards Update No. 2022-02,* available at https://www.fasb.org/Page/ShowPdf?path=ASU+2022-02.pdf.

8 *Id* at 12.

While the US GAAP reporting treatment for MBEFDs is clear following the issuance of ASU 2022-02, the regulatory reporting instructions for MBEFDs on the FR Y-9C and Call Report have not yet been finalized. In July 2022 the FDIC issued a proposal to incorporate the TDR accounting standards update into the FDIC Assessments framework. Several commenters, including BPI,[9] requested instructional clarification that any reporting requirement for MBEFDs be aligned with ASU 2022-02, specifying the requirement of a 12-month trailing calculation, as opposed to cumulative totals. The FDIC released the final rule in October 2022 with an effective date of January 1, 2023, however the rule provided no further clarity on the regulatory reporting treatment of MBEFDs. The FDIC notice stated that they "and other members of the Federal Financial Institutions Examination Council (FFIEC) are planning to revise the Call Report forms and instructions to replace the current TDR terminology with updated language from ASU 2022-02 for the first quarter of 2023."[10] The most recent supplemental instructions to the Call Reports and FR Y-9C,[11] applicable to reports as of March 31, state that firms should report "all loans modified since adoption of the new standard."[12] This language could be interpreted as suggesting a cumulative approach to reporting MBEFDs if not modified before 2024, which we believe would be an inappropriate requirement and detrimental to firms and their customers.

A. A 12-month time period for the regulatory reporting of MBEFDs is more appropriate than requiring cumulative, i.e. permanent, reporting.

One of the paramount difficulties of TDR reporting was the "once a TDR, always a TDR" standard, which required cumulative reporting for regulatory purposes. The issue of cumulative reporting compared to reporting contained to a specific time horizon was also considered by the FASB in ASU 2022-02. In ASU 2022-02, the insignificant delay in payment guidance was updated to operate on a 12-month lookback, as opposed to a cumulative approach. Specifically, the FASB states that "a cumulative lookback may not provide decision-useful information because some modifications that are spaced out over an extended period of time may be unrelated and would be considered minor when evaluated individually" and that "the cumulative lookback period could be operably burdensome because for assets with a long maturity, it would require that an entity track minor delays over an extended period of time period of time."[13] These same points are also applicable for the purposes of reporting MBEFDs on the Call Reports and FR Y-9C.

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9 BPI, *Assessments, Amendments to Incorporate Troubled Debt Restructuring Accounting Standards Update,* available at https://bpi.com/wp-content/uploads/2022/08/ABA-BPI-Response-to-FDIC-NPR-to-Replace-TDRs-in-Large-Bank-Assessments-Scorecards.pdf.

10 87 Fed. Reg. 64348 at 64350.

11 Federal Reserve, *March 2023 FR Y-9C Supplemental Instructions*, available at https://www.federalreserve.gov/apps/reportingforms/Download/DownloadAttachment?guid=2a49f17a-61f3-48b6-8269-385e3c7d5153

12 FFIEC, *March 2023 Call Report Supplemental Instructions*, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202303.pdf.

13 FASB, *supra* note 7 at 61.

BPI agrees that it is prudent to disclose modification information such as type, expected impact, and then the subsequent performance of that loan over some time horizon. However, once a modification is made, firms are often in a position to see a lower likelihood of loss over time, such that the original modification becomes less significant over time. For these reasons, a cumulative lookback period for MBEFDs would be inappropriate for reporting, as the current financial status of a customer may be independent of their status over 12-months ago.

The cumulative reporting of MBEFDs could negatively impact the way a firm's risk is perceived by external entities. The universe of MBEFDs, over time, will be a significantly larger population than what has historically been considered for TDR purposes. For a modification to be considered a TDR, the borrower must be experiencing financial difficulty and the creditor must give a concession, which was generally required to be captured as a credit loss. Since MBEFDs are not limited to those modifications that include a concession, modifications that carry a lower risk profile are grouped with modifications that would have been a TDR under prior guidance. MBEFDs now capture all maturity extensions, which cover a wide range of modifications and risk-profiles, whereas TDRs did not. For instance, a short maturity extension, on comparable market terms, made towards the end of the life of a loan, where the creditor still expects to collect all amounts due, contains much less risk than an extension made in the time quickly following the inception of the loan. Under the TDR standards, such maturity extensions with market terms were not necessarily considered TDRs;[14] however, all term extensions will be considered as MBEFDs, resulting in a significantly broader population.[15] Additionally, if a firm is able to work with a customer with an adequate consideration for a concessionary term, such as a change in collateral requirements, that would not have necessarily been considered a TDR,[16] but would now be a MBEFD.

Many borrowers who experience financial difficulties often do so on a temporary basis and similarly, any increase in their credit risk is often temporary. Further, good credit customers, or those in good standing on their modified loans for an extended period of time, have a much lower risk profile compared to recently developed MBEFDs with higher risk characteristics. Firms offer modifications to borrowers to assist with temporary credit scenarios and, in the long-term, including these modifications alongside higher risk or underperforming assets will not be an accurate representation of those loans. A reporting period of 12 months after a modification event removes the potential for a misinterpretation that the credit risk applicable to all outstanding loans that were previously modified to borrowers experiencing financial difficulties, that have performed well following the modification, are a higher credit risk through their remaining life.

Additionally, requiring the reporting of MBEFDs on a cumulative basis could disincentivize banks from working prudently and flexibly with customers during adverse financial scenarios. MBEFDs are likely to occur in higher volumes during times of financial stress, such as economic downturns or natural

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14 FDIC, *Accounting for Troubled Debt Restructurings,* available at https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum12/sisummer12-article4.pdf at 27.

15 FASB, *supra* note 7 at 10.

16 *Id* at 61.

disasters. Similarly, in the years following these periods, banks are often under increased scrutiny from credit rating agencies and the public in terms of their risk profile. If MBEFDs are seen as unfairly increasing the risk profile of a firm, even after an extended period of time following the initial date of modification, they could be incentivized to undertake fewer of these transactions during the same periods when they are needed most by customers.

This result would seem to be at odds with the intent of recent legislation and statements made by regulators encouraging these types of modifications. In a recent proposal for a policy statement from the FDIC, along with the OCC and National Credit Union Administration, the agencies speak to prudent commercial real estate loan accommodations and workouts, and on the value of working prudently and constructively with creditworthy customers.[17] Additionally, an important item included in the CARES Act[18] was the temporary relief granted to banks from reporting certain TDRs that were due to the COVID-19 pandemic. Further, interagency guidance was issued providing banks with additional relief from reporting TDRs for COVID-19-related modifications.[19] The intent of these relief measures was to encourage financial institutions to work prudently with borrowers who were or may have been unable to meet their contractual payment obligations because of the effects of COVID-19 by removing the negative TDR accounting consequences. However, with a cumulative reporting standard for MBEFDs, there is the potential that banks could be discouraged from proactively working with their borrowers in both normal economic scenarios and, more importantly, in stressed economic cycles due to the reporting requirements and potential public perceptions.

B. If the Call Report and FR Y-9C were to utilize a longer time period for the reporting of MBEFDs than is required by GAAP, there would be significant operational burden for banks, without any substantial corresponding benefit.

In ASU 2022-02, the FASB states that MBEFDs are intended to be a more detailed disclosure about modifications of receivables made to borrowers experiencing financial difficulty, compared to TDRs, with additional reporting of information such as the types of modifications provided, expected financial effect of those modifications and the performance of the loans after modification.[20] In addition to these enhanced reporting requirements, as noted above, the term MBEFD encompasses a broader set of modifications than TDRs including principal forgiveness, interest rate reduction, and other-than-insignificant payment delay or a term extension, which do not require a concession. The transition to MBEFDs results in reporting systems having to maintain additional data elements, which were not previously reported, for a greater volume of modifications. This is compounded further as the

[17] FDIC, Office of the Comptroller of the Currency and National Credit Union Administration, "Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts," 87 Federal Register 47273 (August 2, 2022), available at www.govinfo.gov/content/pkg/FR-2022-08-02/pdf/2022-16471.pdf.

[18] Text - H.R.748 - 116th Congress (2019-2020): CARES Act, H.R.748, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/house-bill/748/text.

[19] OCC, *Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus*, available at https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-50a.pdf.

[20] FASB, *supra* note 7 at 60.

accounting update also requires that related disclosures reflect any and all modifications provided on a loan during the reporting period, calling for additional tracking. The FASB acknowledged this increased complexity of reporting MBEFD in ASU 2022-02, stating that the reporting updates "would require extensive system and process changes to capture the additional modifications."[21]

The reporting of MBFEDs requires updates to firms' reporting systems, including data elements and governance and control frameworks, and if reporting is required to be done on a cumulative basis, the development of unique processes solely for purposes of reporting on the Call Reports and FR Y-9C, that would not otherwise be utilized for any other internal or external reporting or risk management process. Currently, firms' systems for the reporting of MBEFDs for GAAP and SEC disclosures are set up to pull records on a 12-month trailing basis. If the Call Reports and FR Y-9C were to require the reporting of modifications beyond the 12-month period, firms would have to develop a separate process for this reporting, including the necessary governance and controls frameworks, solely to track these MBEFDs that have not been deemed to be useful information for purposes of US GAAP reporting. These independent reporting systems would have multiple costs associated with them including those related to development, maintenance, storage and reconciliation. Moreover, this expansive collection of data would be required to be tracked and maintained across all loan types, for the lifetime of those loans, which can extend to 30 plus years for mortgages and 7 years for auto loans. The construction and maintenance of such an expansive system for such long periods of time, for the sole use of a reporting requirement change that conflicts with US GAAP requirements would not be commensurate with any limited benefit from this additional information.

C. A 12-month reporting requirement for MBEFDs would have the benefit of avoiding a RAP-GAAP difference.

The uncertainty surrounding the reporting period for MBEFDs could lead to divergence from US GAAP standards depending on the final Call Report and FR Y-9C instructions. As noted above, the March 2022 Call Report Supplemental Instructions say to report "all loans modification since adoption."[22] For the first 12 months after adoption, this language will not conflict with the US GAAP standard as MBEFDs will not have yet existed for more than 12 months. However, if firms were to report "all loans modification since adoption" after the initial 12 months, a RAP-GAAP difference would arise. It is our understanding that generally, the agencies seek to avoid or reduce RAP-GAAP differences. This is explicit under the statutory provisions of Section 37(a) of the Federal Deposit Insurance Act,[23] which states that the accounting principles applicable to reports or statements required to be filed by all insured depository institutions with the Agencies must be uniform and consistent with GAAP. The current instructions for the Call Reports, effective March 2023, further support this notion and state in relevant part that "[i]n their Call Reports submitted to the federal bank supervisory agencies, banks and their

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21 *Id* at 61.

22 FFIEC, *supra* note 11.

23 12 U.S.C. § 1831n(a)(2)(A).

subsidiaries shall present their financial condition and results of operations on a consolidated basis in accordance with U.S. generally accepted accounting principles (US GAAP)."[24]

The lack of clarity in the supplemental instructions together with the language expressed in the FDIC Assessments final rule from October 2022, indicating a belief that elevated credit risk associated with restructured loans are "not necessarily eliminated within a given time frame, such as a 12 month period" has caused confusion and uncertainty regarding the intent of the agencies for the reporting of MBEFDs. We believe the US GAAP standard contained in ASU 2022-02 requiring the reporting of MBEFD for the 12 months following a modification to be the appropriate reporting metric for Call Report and FR Y-9C purposes. Diverging from the US GAAP reporting standard, and instead adopting a different reporting metric for regulatory reporting, would cause confusion for the users of information extracted from regulatory filings and US GAAP reports.

We appreciate that the Agencies plan to formally propose revisions to the Call Report forms and instructions to replace the current TDR terminology with updated language from ASU 2022-02 including describing how institutions would apply ASU 2022-02 and report MBEFDs. While there has not yet been a proposal issued on these changes, as the current Supplemental Instructions would require cumulative reporting of MBEFDs if the verbiage were to remain the same, we believe this would be an incorrect outcome for the reasons noted throughout section II of this letter. We urge the Agencies to clarify the regulatory reporting treatment of MBEFDs and to align this reporting with US GAAP. As with any reporting change that requires the development of new reporting systems, processes and controls, firms require significant time to effectively implement these changes to complete the proper system builds, testing and verification, in accordance with the expectations of the Agencies and the firms. Following the adoption of ASU 2022-02 and CECL, firms have sunset TDR reporting and fully transitioned to MBEFDs in alignment with US GAAP. Therefore, any revisions to reporting that would not follow the US GAAP reporting requirements for MBEFDs would require modifications to firms' existing reporting systems described in Section II.B and require significant advanced notice for firms. Further, we ask that revisions made to align the reporting of modifications to ASU 2022-02 be also applied to all regulatory reporting forms, with sufficient advance notice, for which the transition from TDRs to MBEFDs is pertinent.

III. The reporting of Loan Modifications made under Section 4013 of the CARES Act in Call Report Schedule RC-C Memorandum line items 17a and 17b, should be discontinued.

Section 4013 of the CARES Act[25] permitted financial institutions to suspend the requirement to categorize certain loan modifications related to the COVID-19 pandemic as troubled debt restructurings. Further, an April 2020 Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus[26] detailed the requirements for a loan modification to be an eligible loan under section 4013. As previously detailed, ASU 2022-02 removes TDRs and replaces them with MBEFDs. In the first quarter of 2022, the updated FR Y 9-C forms and

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[24] Federal Reserve, *supra* note 4 at 10a.

[25] CARES Act, *supra* note 17.

[26] OCC, *supra* note 18.

instructions[27] removed Schedule HC-C memorandum line items 16.a and 16.b, which pertained to the number and balance of outstanding Section 4013 loans. However, similar items on the forms and instructions for Call Reports Schedule RC-C Memorandum 17.a and 17.b remain.[28] Given the change from TDRs to MBEFDs, we respectfully request that the Agencies eliminate these items from the Call Report reporting forms and instructions, which would align with the current accounting treatment and the FR Y-9C.

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BPI appreciates the opportunity to comment on the proposal. If you have any questions, please contact the undersigned by phone at 202.589.1932 or by email at jack.stump@bpi.com.

Respectfully submitted,

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[27] Federal Reserve, *March 2022 FR Y-9C Instructions,* available at https://www.federalreserve.gov/apps/reportingforms/Download/DownloadAttachment?guid=ab8e1398-6047-4dcd-848d-d9fe6c02a899.

[28] Federal Reserve, *March 2023 Call Report Instructions,* available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202303_i.pdf.