

Via E-Mail (comments@fdic.gov)



Mr. Manuel E. Cabeza, Counsel
Attn: Comments
Room MB-3128
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Subject: Call Report and FFIEC 002 Revisions

Dear Mr. Cabeza:

This letter offers comments on the changes to the “past due” definition in the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051) proposed by the federal banking agencies (the agencies)¹ in their [Federal Register notice published on September 28, 2023](#) (September 2023 notice). This comment letter is separate from, and in addition to, the comment letter on the agencies’ September 2023 notice that I submitted to the FDIC on November 24, 2023.

In their September 2023 notice, the agencies proposed three changes to the Call Report Schedule RC-N general instructions that define “past due.”² These proposed revisions would take effect beginning with the March 31, 2024, report date.

Although it is listed in the September 2023 notice as the second proposed revision, I would like to begin by discussing this revision first. The notice states that “the proposed revisions would clarify that a loan or other asset should be reported as past due when either an interest payment or principal payment is due and unpaid for 30 days or longer.” This is partially incorrect because the “Draft Instructions for Call Report Revisions Proposed to Take Effect March 31, 2024”³ for the Schedule RC-N “past due” definition retain, in the first paragraph numbered (1), the existing guidance stating that a loan or lease financing receivable “with payments scheduled monthly are to be reported as past due when the borrower is in arrears two or more monthly payments.” Paragraph (1) then provides that, “[a]t an institution’s option, loans and leases with payments scheduled monthly may be reported as past due when one scheduled payment is due and unpaid for 30 days or more” (emphasis added).

¹ The agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC).

² See 88 Federal Register 66938, September 28, 2023. Call Report Schedule RC-N is entitled Past Due and Nonaccrual Loans, Leases, and Other Assets.

³ See page 41 of the draft instructions for the [FFIEC 031](#) and the [FFIEC 041](#) and page 40 of the draft instructions for the [FFIEC 051](#).

Next, the paragraph in the draft Schedule RC-N “past due” definition instructions recharacterized as example (1)⁴ has been revised to state that “other assets providing for the payment of principal and/or interest at stated intervals are to be reported as past due after one principal and/or interest payment is due and unpaid for 30 days or more.” The wording of this example (1) paragraph contradicts the language quoted above from paragraph (1) of the “past due” definition because a loan or lease with payments scheduled monthly (for which an arrearage of two or more monthly payments is normally the basis for “past due” reporting) is, at the same time, an asset providing for the payment of principal and/or interest at stated (i.e., monthly) intervals (for which, according to the example (1) paragraph, one principal and/or interest payment being due and unpaid for 30 days or more is the basis for “past due” reporting). A suggested clarification to remedy for this contradiction is presented in the Appendix to this comment letter.

As their first revision, the agencies proposed to clarify the “past due” reporting treatment of a loan or other asset that the reporting institution is in the process of restructuring if this process has not concluded. To accomplish this clarification, the draft revised instructions for Schedule RC-N reflect the addition of the following proposed new example paragraph:

- (3) A loan or other asset on which interest and/or principal remains unpaid for 30 days or more and which the institution is in the process of renewing, extending, or modifying in a manner that would change required payment dates, should be reported as past due if the renewal, extension, or modification has not been executed and become effective.

While I concur with the agencies’ objective in explaining the “past due” reporting treatment for a loan or other asset in the process of restructuring, I do not believe the proposed instructional language quoted above properly clarifies this situation. The description of the loan or other asset in the first part of the proposed new example (3) paragraph is incomplete because it should refer to “an interest and/or principal payment” rather than just “interest and/or principal.” Without adding the word “payment,” the proposed language could inappropriately imply that a loan should be reported as past due if any of the remaining principal balance has been unpaid for 30 days or more even if the repayment of this balance is not yet contractually due. Adding the word “payment” would align the language of this proposed new example paragraph with the language used in certain other paragraphs in the Schedule RC-N instructions for the “past due” definition.

In addition, the contradiction discussed above is present in the proposed new example (3) paragraph because a loan or lease with payments scheduled monthly (for which an arrearage of two or more monthly payments is normally the basis for “past due” reporting)⁵ can be undergoing a restructuring that has not been executed and become effective.

Furthermore, for the sake of greater clarity, it would be beneficial for the proposed new example (3) paragraph to explicitly address the date as of which the phrase “the renewal, extension, or modification has not been executed and become effective” specifically refers. Accordingly, I would suggest adding “as of the quarter-end report date” at the end of the proposed new example (3) paragraph. Also, besides changing required payment dates,

⁴ In the existing Schedule RC-N “past due” definition instructions, this is paragraph (3).

⁵ For example, an amortizing loan secured by real estate.

modifications often change the required payment amounts, particularly if the modification includes an interest rate change. To acknowledge this, I would also suggest adding “(and may change required payment amounts)” after “would change required payment dates.”

As their third revision, the agencies proposed to “restructure the [‘past due’] definition to clarify the general rules for reporting past due loans, the exceptions to those general rules, and nonexclusive examples of reporting past due loans or other assets consistent with those instructions.” Based on my reading of the “Draft Instructions for Call Report Revisions Proposed to Take Effect March 31, 2024” for the Schedule RC-N “past due” definition, I do not believe the agencies’ proposed restructuring of the definition accomplishes this objective.

The existing Schedule RC-N “past due” definition instructions set forth five separate and distinct circumstances in which loans and other assets are to be reported as past due. The proposed revised instructions retain three of these circumstances, but then label the other two circumstances (with limited wording changes) as “examples.” A third “example” is the proposed new example (3) paragraph discussed above pertaining to assets in the process of restructuring. In my opinion, none of the three proposed “examples” represents a fact pattern that falls within the scope of any of the three circumstances in which, according to the proposed clarified instructions, loans and other assets are to be reported as past due. In other words, the proposed “examples” are not illustrations of how to apply any of these three circumstances. In this regard, the paragraph discussing partial payments on “retail credit” that follows the three proposed “examples” presents an actual example of a fact pattern involving the treatment of partial payments for determining past due status. Therefore, I would recommend that proposed example paragraphs numbered (1) and (2) revert to being included in the instructions as circumstances in which assets are reported as “past due” and that proposed new example paragraph (3) on assets in the process of restructuring also be included as such a circumstance.

Question 3 in the “Past Due Definition” section of the September 2023 notice asks “What, if any, other clarifications to the definition of ‘past due’ should the agencies consider that would improve usability by institutions and comparability across the institutions?” The agencies have twice publicly addressed the past due reporting treatment for loans in situations where borrowers affected by a natural disaster or a national emergency receive payment accommodations, such as allowing borrowers to defer or skip some payments or extending the payment due date.⁶ The discussion of this topic was similar in both cases, but the information on this reporting treatment is not covered in the Schedule RC-N instructions. Therefore, I would recommend incorporating language on the past due reporting treatment for payment accommodations granted in response to a natural disaster or a national emergency drawn from these two sources into the “past due” definition section of the Schedule RC-N instructions. Incorporating such language into these instructions would improve the usability of the “past due” definition by reporting institutions.

⁶ See Question 3, “Reporting Delinquent Loans, in the “Working with Borrowers” section of the FDIC’s “Frequently Asked Questions for Financial Institutions Affected by the Coronavirus Disease 2019 (Referred to as COVID-19) – As of May 27, 2021,” available at <https://www.fdic.gov/coronavirus/faq-fi.pdf>, and Q1 and A1 in “Past Due and Nonaccrual Reporting” in the FFIEC’s “Accounting and Regulatory Reporting Questions and Answers” section of “Guidance for Financial Institutions in Response to Hurricanes Katrina and Rita,” available at <https://www.ffiec.gov/katrina.htm#accounting>.

I would further note that institutions may not implement payment accommodation programs until some time has passed since a natural disaster or national emergency has affected borrowers. The passage of time between a disaster or emergency affecting borrowers and the implementation of such a program could cross over a quarter-end report date with the program's implementation then taking place before the submission deadline for that quarter's Call Report. As a result, there could be situations in which some borrowers were less than 30 days past due (i.e., "current" for reporting purposes) when they were affected before quarter-end by a natural disaster or national emergency, then became 30 days or more past due as of the quarter-end report date because of the effect of the disaster or emergency, and then were received into an accommodation program after the quarter-end report date. The general rule in the definition of "past due" in the Schedule RC-N instructions is that the past due status of a loan as of a quarter-end report date is determined in accordance with the contractual terms of the loan then in effect. However, the agencies' statements about payment accommodation programs indicate that the past due reporting status for loans in such a program should be determined in accordance with the contractual terms of a loan as its terms have been revised under the program. If the accommodation program has not been implemented until shortly after quarter-end, the agencies' statements about the determination of past due status for loans in the program create an exception to the general rule. Accordingly, when adding language to the Schedule RC-N instructions on the past due reporting treatment for payment accommodations granted in response to a natural disaster or a national emergency, these instructions also should explain this exception.

In addition to the changes and clarifications to the Schedule RC-N instructions on the definition of "past due" discussed above, I would suggest certain other technical clarifications to these instructions. For the agencies' consideration and assistance as they decide how to finalize the Schedule RC-N instructions addressing the reporting of loans and other assets as "past due," all of my suggested changes and clarifications to these instructions are presented in redline in the attached Appendix. Please note that the starting point for these suggested changes and clarifications is the existing version of the Schedule RC-N past due definition rather than the agencies' "Draft Instructions for Call Report Revisions Proposed to Take Effect March 31, 2024."

Finally, the agencies' September 2023 notice also includes a proposal by the Board, on behalf of the agencies, to revise the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S). The instructions for FFIEC 002 Schedule N, Past Due, Nonaccrual, and Restructured Loans, currently contain a definition of "past due" that is substantively the same as the existing definition of this term in the instructions for Call Report Schedule RC-N, Past Due and Nonaccrual Loans, Leases, and Other Assets. Although the agencies proposed changes to the "past due" definition in the Call Report instructions, they did not propose any changes to the "past due" definition in the FFIEC 002 instructions. I would recommend that whatever changes the agencies decide to make to the Call Report definition of "past due" after considering comments received on this aspect of the September 2023 notice should also be made to the FFIEC 002 definition of "past due" to maintain definitional consistency between these two reports.

Thank you for considering these comments. Please feel free to contact me if you have any questions or would like to discuss my comments further.

Sincerely,

A solid black rectangular box used to redact the signature of Robert F. Storch.

Robert F. Storch

Appendix

Definitions

Past Due – The past due status of a loan or other asset should be determined in accordance with its contractual repayment terms in effect as of the quarter-end report date (or, as discussed below, as its terms have been revised under a payment accommodation or similar program). For purposes of this schedule, grace periods allowed by the bank institution after a loan or other asset technically has become past due but before the imposition of late charges are not to be taken into account in determining past due status. Furthermore, loans, leases, debt securities, and other assets are to be reported as past due when either interest or principal is unpaid in the following circumstances:

- (1) Closed-end installment loans, amortizing loans secured by real estate, and any other loans and lease financing receivables with payments scheduled monthly are to be reported as past due when the borrower is in arrears two or more monthly payments. (At an bank's institution's option, loans and leases with payments scheduled monthly may be reported as past due when one scheduled payment is due and unpaid for 30 days or more.) Other multipayment obligations with payments scheduled other than monthly are to be reported as past due when one scheduled payment is due and unpaid for 30 days or more.
- (2) Open-end credit such as credit cards, check credit, and other revolving credit plans are to be reported as past due when the customer has not made the minimum payment for two or more billing cycles.
- (3) Single payment and demand notes, debt securities, and other assets providing for the payment of interest at stated intervals and the payment of principal at maturity (or when called on a demand note) are to be reported as past due after one interest and/or principal payment is due and unpaid for 30 days or more.
- (4) Single payment notes, debt securities, and other assets providing for the payment of interest and principal at maturity are to be reported as past due after maturity if interest and/or principal remains unpaid for 30 days or more.
- (5) A loan or other asset (a) on which (i) an interest and/or principal payment remains unpaid for 30 days or more or (ii) two or more scheduled monthly payments are in arrears, as applicable, and (b) which the institution is in the process of renewing, extending, or modifying in a manner that would change required payment dates (and may change required payment amounts) should be reported as past due if the renewal, extension, or modification has not been executed and become effective as of the quarter-end report date.
- (56) Unplanned overdrafts are to be reported as past due if the account remains continuously overdrawn for 30 days or more.

Borrowers who were current before becoming affected by a natural disaster or national emergency and then receive payment accommodations as a result of the effects of the disaster or emergency, such as allowing them to defer or skip some payments or extending the payment due date, generally would not be reported as past due. Each institution should consider the specific facts and circumstances regarding its payment accommodations for borrowers affected by a natural disaster or national emergency in determining the appropriate reporting treatment in accordance with these instructions. Past due reporting status should be determined in accordance with the contractual terms of a loan as its terms have been revised under a payment accommodation or similar program provided to an individual customer or across-the-board to all affected customers. Accordingly, if all payments are current in accordance with the revised terms of the loan, the loan would not be reported as past due.

For loans subject to a payment deferral program on which payments were 30 days or more past due before the borrower became affected by a natural disaster or national emergency, the past due status of the loan may be adjusted back to the status that existed at the date the borrower became affected, with

the past due status essentially being “frozen” for the duration of the payment deferral period. For example, if a consumer loan subject to a payment deferral program was 60 days past due on the date the borrower became affected by a natural disaster or national emergency, the institution would continue to report the loan as 30 through 89 days past due during the deferral period (unless the loan is reported in nonaccrual status or charged off).

For purposes of this schedule, banksinstitutions should use one of two methods to recognize partial payments on “retail credit,” i.e., open-end and closed-end credit extended to individuals for household, family, and other personal expenditures, including consumer loans and credit cards, and loans to individuals secured by their personal residence, including home equity and home improvement loans. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing delinquency. Alternatively, an bankinstitution may aggregate payments and give credit for any partial payment received. For example, if a regular monthly installment is \$300 and the borrower makes payments of only \$150 per month for a six-month period, the loan would be \$900 (\$150 shortage times six payments), or three monthly payments past due. An bankinstitution may use either or both methods for its retail credit, but may not use both methods simultaneously with a single loan.