BANK POLICY INSTITUTE

November 21, 2023

Via Electronic Mail

Chief Counsel's Office
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
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Manuel E. Cabeza, Counsel
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, FFIEC 7100–0032

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) and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002).[2]

BPI is supportive of the purpose of the proposed revisions to the Call Reports in replacing TDRs, which are no longer recognized following the adoption of Accounting Standards Update No. 2022-02[3] and the CECL methodology, with modifications to borrowers experiencing financial difficulty (MBEFD). BPI previously submitted comments to the Agencies regarding the importance of conforming Call Report reporting standards with U.S. GAAP, including not maintaining a cumulative reporting standard for MBEFDs. We appreciate that these comments appear to have been considered for the current proposal, which does not contain this unnecessary and burdensome reporting practice and further considers a potential 12-month reporting period in accordance with ASU 2022-02. It is critical that any regulatory reporting requirements for MBEFDs remain aligned with existing U.S. GAAP standards. Our comments herein are intended to reinforce this view and highlight the complexities that would arise if the reporting requirements are not aligned. Our comments also request increased clarity surrounding the proposed changes to the definition of 'Past Due' across the Call Reports and FFIEC 002.

I. The regulatory reporting of MBEFDs on the Call Reports should conform with existing U.S. GAAP requirements.

ASU 2022-02 eliminated the recognition and measurement guidance for TDRs for institutions that have adopted CECL 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, established in ASU 2022-02, requires the disclosure of the type and financial effect of MBEFDs for the current reporting period, and receivable performance in the 12 months following a modification.[4] We are supportive of the Agencies efforts in this proposal to "align the data collected in the Call Report forms and instructions with the definition of loan modifications to borrowers experiencing financial difficulty that is used in U.S. generally accepted accounting principles (GAAP)"[5] and incorporate those changes made in ASU 2022-02 to the Call Reports.

However, as currently proposed, the reporting changes would require banks to report MBEFDs for at least 12 months and until an institution performs a current, well documented credit evaluation to support that the borrower is no longer experiencing financial difficulty. This proposed requirement would not be aligned with U.S. GAAP and would be extremely burdensome for firms to implement, going well beyond the reporting changes. Implementation of the proposed reporting standard would require banks to make significant changes to their own internal credit evaluation processes, despite the lack of any indication that banks' credit evaluation practices require such changes. As a result, any changes made to banks' credit evaluation cycles would be for the sole purpose of reporting this information on the Call Report, without any substantial corresponding benefit to either the firm or the

---

2 88 Fed. Reg. 66933.
3 FASB, Accounting Standards Update No. 2022-02, available at https://www.fasb.org/Page/ShowPdf?path=ASU+2022-02.pdf.
4 FASB, *supra* note 3 at 12.
5 88 Fed. Reg. 66933 at 66936.

Agencies. If instead, the Agencies were to align the final regulatory reporting standard with U.S. GAAP, this would provide proper insight into the risk profile of existing MBEFDs in accordance with how banks have been managing MBEFDs to date and would have the added benefit of allowing for on time implementation (if the final forms and instructions are issued sufficiently in advance).

A. The Call Report's definition of MBEFDs should align with the U.S. GAAP definition and not scope in any additional modifications.

In accordance with alignment with U.S. GAAP, BPI supports the proposed Call Reports glossary definition of 'Loan Modifications to Borrowers Experiencing Financial Difficulty' and related draft instructions, which state that "the accounting standards for loan modifications to borrowers experiencing financial difficulty are set forth in ASC Topic 326, Financial Instruments – Credit Losses and ASC Topic 310, Receivables. ASC Subtopic 310-10 requires modifications of receivables to borrowers experiencing financial difficulty where the modification results in the form of principal forgiveness, an interest rate reduction, an other-than-insignificant payment delay, or a term extension (or a combination thereof) to be disclosed for financial reporting purposes."[6] The Agencies proposal also indicates the desire to align with U.S. GAAP when it states that for Call Reports Schedules RC-C and RC-N "the modifications reported in these Memoranda items would need to meet the definition of "loan modifications to borrowers experiencing financial difficulty" as described in ASU 2022–02."[7] The four modifications included in the proposed Call Report definition are appropriately aligned with the treatment under U.S. GAAP. It would be helpful for the agencies to explicitly confirm this definitional alignment with U.S. GAAP and therefore limit the population of MBEFDs for regulatory reporting purposes to those four modifications.

B. The reporting period for MBEFDs in the Call Report should not extend beyond the 12-months required by U.S. GAAP, as any divergence would result in significant operational burden for banks, without any substantial corresponding benefit.

Although BPI is supportive of the definition of 'Loan Modifications to Borrowers Experiencing Financial Difficulty' in the proposed Call Report instructions, we strongly disagree with the proposed reporting standard for MBEFDs. As proposed, this standard would "require reporting of these modifications for a minimum period of 12 months and until an institution performs a current, well documented credit evaluation to support that the borrower is no longer experiencing financial difficulty, unless the loan is paid off, charged-off, sold, or otherwise settled."[8] The final reporting standard should not include any such requirement, as it diverges from U.S. GAAP and imposes significant costs and burdens on financial institutions that are not justified by any commensurate benefit.

---

6 Federal Reserve, Redlined Draft FFIEC 031 Instructions for the Proposed Call Report Revisions with Proposed Effective Date March 31,2024 , available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_20231002_i_draft.pdf, at 30.

7 88 Fed. Reg. 66933 at 66936.

8 88 Fed. Reg. 66933 at 66937.

<u>The burdens associated with the proposed credit evaluation requirement exceed the purported benefits</u>.

As stated above, banks' credit evaluation practices are not currently aligned with what would be required under the proposal as they do not believe it would provide useful information for purposes of their credit decisioning processes. Requiring firms to undertake a new practice of performing a current, well documented credit evaluation before allowing them to cease reporting MBEFDs after 12 months adds an unreasonable level of complexity and burden to the proposal. Currently, firms undertake credit reviews in accordance with their internal policies and procedures, which are set by management and determine the appropriate circumstances and intervals for these evaluations. When a borrower experiencing financial difficulty receives a modification, the purpose of such modification is to put that customer in a better position on the basis of their "financial hardship" and "mitigate potential credit losses".[9] If the modified loan is performing across the 12-month U.S. GAAP disclosure period, firms should be able to reasonably conclude that that borrower is no longer experiencing financial difficulty in relation to the payment of that loan and consider that loan performing, without the further need for a credit evaluation.

Firms' credit review practices vary across financial products, and firms are currently able to manage any risks associated with these products without the proposed additional requirement to reperform a credit evaluation. In particular, the concept of a credit review typically does not apply to retail loans. These products are currently delinquency-managed by firms, meaning that if the loan is not performing under its modified terms, firms manage the risk by moving that product to delinquency, foreclosure or charging it off. For retail loan products, 12-months is a lengthy cycle, if a loan is continuously performing during this period, at the conclusion of this window a credit review would serve no added purpose, as the modification has clearly and demonstrably enabled the borrower to continue to pay back the loan on its new terms.[10] If after the 12-month period, the loan starts to once again display signs of increased risk, firms would then manage that risk appropriately, which may include instituting further modifications, therefore restarting the 12-month MBEFD reporting process. Firms should not be required to undergo the credit evaluation process, without cause, for retail products not exhibiting any increased risk after 12 months solely for the purposes of reporting requirements on the Call Report.

Similarly, for wholesale loans, credit reviews are not needed as firms typically manage any associated risks from these loans with other methods. For instance, firms' existing risk management practices may require additional fees or increased collateral with respect to a wholesale loan to protect against losses. If a firm chooses to put a wholesale loan on an incremental credit review schedule, such review would be performed on a regular schedule, as determined by their existing risk management practices, to ensure performance. Requiring an additional, current, well documented credit evaluation to occur at least 12 months after a loan has become classified as an MBEFD to support that the borrower is no longer experiencing financial difficulty would be placing an additional and unnecessary

---

9 FASB, *supra* note 3 at 20.

10 There is also a subset of loans that fail to perform within the 12-month window. To address these products, firms would take swift action to improve that loan's performance prior to the 12-month point, issuing a modification and restarting the MBEFD cycle.

burden on firms for risks they are already monitoring under their existing practices and procedures. Moreover, the credit evaluation requirement is unnecessary because in the event a loan does not perform under the modification at the conclusion of the 12-month GAAP period, firms are able to charge-off the loan, or administer another modification to get the borrower in a more advantageous position and restart the MBEFD process.[11]

The reporting of MBEFDs on the Call Report should not create a RAP-GAAP difference.

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,[12] 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, updated September 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 subsidiaries shall present their financial condition and results of operations on a consolidated basis in accordance with U.S. generally accepted accounting principles (GAAP)."[13]

The proposed Call Report instructions state that "accounting standards for loan modifications to borrowers experiencing financial difficulty are set forth in ASC Topic 326, Financial Instruments – Credit Losses and ASC Topic 310, Receivables", which defines "[f]or each period for which a statement of income is presented, an entity shall disclose… receivable performance in the 12 months after a modification of a receivable made to a debtor experiencing financial difficulty."[14] Prior to finalizing ASU 2022-02, FASB contemplated longer time periods for the consideration of modifications. However, FASB ultimately decided to limit the required disclosures to those for modifications made in the previous 12-month period, noting that a longer lookback period "may not provide decision-useful information."[15] The same considerations apply in the Call Report. Firms have already been applying this standard and their current processes and systems are set up for application of MBFDs in accordance with U.S. GAAP and the Agencies should conform the final reporting standards to U.S. GAAP.

If the Agencies finalize reporting standards that diverge from U.S. GAAP by going beyond its 12-month reporting period, they should clearly explain how the Agencies intend to use the data. The current proposal simply states that such data "provides useful supervisory information on the borrower's continued performance or lack thereof on the modified loan". However, as explained above, continued performance would already be demonstrated by the 12-month period contained in U.S. GAAP. Any failure to continuously perform in the future would be picked up without an additional credit

---

11 To the extent that any of these changes are driven by concerns about replenishing the Deposit Insurance Fund, we would note that there is also no corresponding increase in a firm's assessment fee. Since the underperforming asset ratio on the scorecard includes both 'restructured loans' (MBEFDs) and past-due loans, any MBEFD that is not performing at the conclusion of a 12-month window will be reflected in a firm's assessment as past-due, regardless of their continued reporting as a MBEFD.

12 12 U.S.C. § 1831n(a)(2)(A).

13 Federal Reserve, September 2023 Call Report Instructions, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202309_f.pdf

14 FASB, *supra* note 3 at 12.

15 FASB, *supra* note 3 at 62.

evaluation, through either a further modification that restarts the 12-month MBEFD process, or through the non-performing asset ratio on the FDIC assessment scorecard. To the extent that the Agencies seek to implement any reporting standard for MBEFDs that are not aligned to U.S. GAAP, there should be ample justification for that burden and clear intent on the use of this additional data that go well beyond what is contained in the proposal.

The Call Report is not the appropriate way to collect proposed additional loan data on MBEFDs that may be useful in times of stress.

The notice states that the requirement for firms to report MBEFDs for 12-months and until they perform a current, well documented credit evaluation to support that the borrower is no longer experiencing financial difficulty would be useful as "it may take longer than 12 months following the modification to assess whether loans are performing in accordance with their modified terms and if the borrower is no longer experiencing financial difficulty" as "evidenced by the modifications made during the COVID–19 pandemic in 2020, 2021, and 2022."[16] BPI agrees that in unprecedented times of economic distress, such as during the COVID-19 pandemic, the Agencies may require further information on borrower's performance on modified loans. However, including such a requirement as part of firms BAU regulatory reporting is not an appropriate or reasonable way to ensure the provision of this information under stress conditions. Although a reporting period beyond U.S. GAAP 12-months may contain useful information during extraordinary economic periods, incorporating this standard into BAU is overly burdensome to firms given its limited corresponding benefit in day-to-day reporting.

If the Agencies are interested in increased reporting on MBEFDs during unusual and extenuating circumstances, such as occurred during the onset of the COVID-19 pandemic, rather than incorporating burdensome standards into BAU regulatory reporting, a more reasonable option would be to instead institute additional and temporary reporting requirements in such a scenario. This would be consistent with Agency actions during the COVID-19 pandemic, such as the institution of the Emerging Risk Data Collection (ERDC) to provide the additional information they felt appropriate under the circumstances. In such an event, by using a new, and time-limited, reporting requirement, the Agencies could obtain the data they felt was necessary for the duration of the event causing concern, without placing a significant burden on firms' everyday reporting practices.

Unnecessarily burdensome reporting requirements could have the unintended effect of disincentivizing firms from issuing MBEFDs to borrowers.

Many borrowers who experience financial difficulties often do so on a temporary basis and similarly, any increase in their credit risk is often temporary. Firms offer modifications to borrowers to assist with temporary credit scenarios. After the 12-month period required by U.S. GAAP, including these modifications alongside higher risk or underperforming assets would not be an accurate representation of those loans. The proposed requirement to report MBEFDs until firms perform a current, well documented credit evaluation could ultimately 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 disasters.

---

[16] 88 Fed. Reg. 66933 at 66937.

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, 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 accounting consequences. However, with a burdensome 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.

The system alterations required to comply with the rule as proposed would be a significant burden.

As noted, following the adoption of ASU 2022-02 and CECL, firms have sunset their TDR reporting, including decommissioning the related reported reporting systems and fully transitioning to MBEFDs in alignment with U.S. GAAP. Therefore, a reporting standard aligned with U.S. GAAP would be relatively straightforward for the banks to implement and would provide the Agencies with the same pertinent information identified by the FASB in their financial reporting standard. However, the proposed reporting standard, specifically the requirement to report *beyond* the GAAP standard of 12 months and until firms perform a current, well documented credit evaluation to support that the borrower is no longer experiencing financial difficulty, would impose significant costs and other burdens on institutions as their systems are no structured for this type of reporting, or the off-cycle credit evaluations that would be required to allow institutions to cease reporting of an MBEFD.

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. While firms have conducted reviews and made the necessary changes to comply

---

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/newsreleases/2020/nr-ia-2020-50a.pdf.

with U.S. GAAP standards, these systems and processes would require significant changes for the purposes of the Call Reports in accordance if the proposed revisions remained the same in the final version. Therefore, in order to incorporate the credit evaluation requirement into the Call Report, firms need to make technology changes to review, source, and compile data related to any existing credit evaluations firms already undertake that may be relevant. Such updates, reviews, and data sourcing are time consuming processes, particularly with respect to performing a credit evaluation, which involves and could be impacted by many different components. Additionally, once firms have determined that they can appropriately source the necessary data, they must then adjust internal policies and change databases to create new fields to collect and validate the relevant information for the purposes of Call Report reporting. Further, these adjustments to current reporting processes necessitate the modification of reporting controls and data governance procedures, all of which will need to be tested so they can be operational and fully compliant with the standards of the Agencies and the firms prior to the effective date.

C. The proposed as of date of March 31, 2024 for implementation would not be possible if the changes are finalized as proposed.

If despite the significant industry concerns regarding the proposal's reporting treatment for MBEFDs, the Agencies were to proceed with finalizing MBEFD reporting as proposed, implementation for an as of date of March 31, 2024 would not be possible. As detailed above, with any reporting change that requires the development of new 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. Firms' systems are already configured to report MBEFDs in alignment with U.S. GAAP following the adoption of ASU 2022-02 and CECL. The additional burden of a well-documented credit evaluation to factor into bank reporting obligations would not only require an overhaul of reporting systems, but also would require firms to begin conducting a new series of credit evaluations beyond those already undertaken by firms and ultimately integrate the results of such evaluations into the regulatory reporting systems. The adjustments to current practices and processes would also necessitate the modification of reporting controls and data governance procedures, all of which will need to be tested to make them operational and fully compliant prior to the effective date.

Therefore, the proposed March 31, 2024, as of date would leave firms with insufficient time to make these necessary systems and governance changes. Since firms would not be set up to effectuate the additional credit evaluation process in time for the proposed reporting implementation firms would likely need to overreport MBEFDs, as without implementation of the new credit evaluation process, they would be required to report all MBEFDs that were in existence at the time of the proposed change's effectiveness. Such a result seems incongruent with the stated desire for "useful supervisory information on the borrower's continued performance or lack thereof on the modified loan" as stated in the proposal as the rationale for the change.[20] It would further serve to revert back to the "once a TDR

[20] 88 Fed. Reg. 66933 at 66937.

always a TDR" metric, at least until such time as firms had modified their credit evaluation practices, that the change to MBEFDs was intended to prevent.

Given that firms' reporting systems are already aligned with U.S. GAAP, if the agencies were to align with a reporting period of 12 months for MBEFDs, firm would be able to be operable by the proposed March 31, 2024, as of date, if the final forms and instructions were issued sufficiently in advance. However, if the Agencies implement the changes as proposed, firms would require at least an additional year to properly implement systems and procedures.

II. The proposed definition of 'Past Due' requires clarification for various loan treatments and across the proposal.

BPI is supportive of the Agencies' efforts to define 'Past Due' to improve the consistency of reporting across institutions; however, there is discrepancy across the proposal and instructions that requires additional clarification. As proposed, the definition of 'Past Due' is comprised of three circumstances when "loans, leases, debt securities, and other assets are to be reported as past due when either interest or principal is unpaid" and there is also a non-exhaustive list of examples.[21] In order to further the Agencies' goals of consistency of reporting across instances, additional clarity is required on the treatment of loans in various programs, such as loans on forbearance or in payment deferral, and loans in the process of restructuring.

Any changes to the 'Past Due' definition for purposes of the Call Report and FFIEC 002 should not change current bank reporting practices. For loans on forbearance or in payment deferral, the Agencies should clarify how such programs impact the contractual repayment terms and thus the treatment for reporting as past due. Further, the Agencies should confirm that loans in the process of restructuring are not to be treated as past due, as there is a lack of clarity between the proposal and proposed Call Report Instructions. In the proposal the Agencies "clarify that reporting institutions must report as past due any loans that the reporting institution is in the process of restructuring if the restructuring process has not concluded".[22] However, the proposed instructions state that an example of assets reportable as past due loan is 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".[23]

The final reporting forms and instructions should confirm that loans that are current and in the process of restructuring do not meet the definition of past due, in alignment with the definition found in the proposed Call Report instructions and current standards. This definition, which includes interest and/or principal that remains unpaid for 30 days or more, is better aligned with the other examples of past due and reflects current firm practices. The above examples, although not exhaustive, highlight the

---

21 Federal Reserve, *supra* note 6 at 41.
22 88 Fed. Reg. 66933 at 66938.
23 Federal Reserve, *supra* note 6 at 41.

lack of clarity currently present in the proposed definition of 'Past Due', that should be clarified or corrected as appropriate by the Agencies.

*****

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,

Jack Stump
Assistant Vice President, Regulatory Affairs
Bank Policy Institute

cc: Michael Gibson
Mark Van Der Weide
Board of Governors of the Federal Reserve System

Benjamin McDonough
Grovetta Gardineer
Office of the Comptroller of the Currency

Doreen Eberley
Harrel Pettway
Federal Deposit Insurance Corporation