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Instructions for New FFIEC 002 Items Associated with the Dodd-Frank Act's Temporary Unlimited Insurance Coverage on Noninterest-Bearing Transaction Accounts (Effective December 31, 2010)

Schedule O – Other Data for Deposit Insurance Assessments

Memoranda

Item No. Caption and Instruction

- 5 Noninterest-bearing transaction accounts (as defined in Section 343 of the Dodd-Frank Act) of more than \$250,000.

NOTE: Schedule O, Memorandum items M5.a and M5.b, below, for the amount and number of noninterest-bearing transaction accounts of more than \$250,000 are to be completed – beginning in the reports for December 31, 2010 – by all FDIC-insured depository institutions, whether or not they had previously opted to participate in the FDIC's Transaction Account Guarantee Program. Memorandum items M5.a and M5.b are to be reported as of the quarter-end report date, not as daily averages for the quarter.

Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Federal Deposit Insurance Act with respect to the insurance coverage of noninterest-bearing transaction accounts. These amendments take effect December 31, 2010, and require the FDIC to “fully insure the net amount that any depositor at an insured depository institution maintains in a noninterest-bearing transaction account.” This unlimited insurance coverage will be in effect only through December 31, 2012.

As defined in Section 343 of the Dodd-Frank Act, a “noninterest-bearing transaction account” is an account “(I) with respect to which interest is neither accrued nor paid; (II) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and (III) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal.”

Thus, the term “noninterest-bearing transaction account” includes all demand deposits, including certified checks and official checks (such as cashiers' checks and money orders) drawn on the reporting institution. However, pursuant to Section 627 of the Dodd-Frank Act, as of July 21, 2011, institutions will no longer be restricted from paying interest on demand deposit accounts. At that time, if an institution modifies the terms of its demand deposit account agreement so that the account may earn interest, the account will no longer satisfy the definition of a noninterest-bearing transaction account, will no longer be eligible for full deposit insurance coverage, and should no longer be reported in Memorandum items M5.a and M5.b.

Even if checks may be drawn on the account, a “noninterest-bearing transaction account” does not include, for example, any transaction account that may earn interest, such as a negotiable order of withdrawal (NOW) account; a money market deposit account (MMDA) as defined in Federal Reserve Regulation D; or an Interest on Lawyers Trust Account (IOLTA). Account features such as the waiver of fees or the provision of fee-reducing credits do not

DRAFT

prevent an account from qualifying as a noninterest-bearing transaction account as long as the account otherwise satisfies the definition of a noninterest-bearing transaction account.

In determining whether funds are in a noninterest-bearing transaction account for purposes of reporting in Memorandum items M5.a and M5.b, the FDIC will apply its normal rules and procedures under Section 360.8 of the FDIC's regulations for determining account balances at a failed insured depository institution. Under these procedures, funds may be swept or transferred from a noninterest-bearing transaction account to another type of deposit account or product that is not a noninterest-bearing transaction account. Except as described in the following sentence, unless the funds are in a noninterest-bearing transaction account after the completion of a sweep under Section 360.8, the funds in the resulting account or product will not be eligible for full deposit insurance coverage and they should not be reported in Memorandum items M5.a and M5.b. However, in the case of funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings account as defined in Federal Reserve Regulation D, the FDIC will treat the swept funds as being in a noninterest-bearing transaction account. If the sum of the swept funds in the noninterest-bearing savings account plus any amount remaining in the related noninterest-bearing transaction account is more than \$250,000, this sum should be reported in Memorandum item M5.a and the swept funds and the related noninterest-bearing transaction account should be reported as one account in Memorandum item M5.b.

Include public funds held in "noninterest-bearing transaction accounts" of more than \$250,000 whether or not they are collateralized with pledged securities or other pledged assets.

Report in the appropriate subitem the amount outstanding and the number of noninterest-bearing transaction accounts (as defined above and in any FDIC regulations implementing Section 343) with a balance on the report date of more than \$250,000. An institution may exclude noninterest-bearing transaction accounts with a balance of more than \$250,000 if the entire balance in the account is fully insured under the FDIC's regular deposit insurance rules (i.e., without considering the insurance protection provided under Section 343), such as joint account relationship rules or "pass-through" insurance coverage rules. In noninterest-bearing transaction accounts with a balance of more than \$250,000 where the entire balance is not fully insured, an institution may exclude any amounts over \$250,000 that are otherwise

DRAFT

Memoranda

Item No. Caption and Instructions

- 5**
(cont.) insured under the FDIC's regular deposit insurance rules. These amounts may be excluded to the extent that they can be determined by the institution and fully supported in the institution's workpapers for this report. An institution is not required to make a determination of amounts otherwise insured but may do so at its option.
- 5.a** **Amount of noninterest-bearing transaction accounts of more than \$250,000.**
Report the aggregate balance of all noninterest-bearing transaction accounts (as defined in Schedule O, Memorandum item M5, above) with a balance on the report date of more than \$250,000. This amount should represent the total of the balances of the noninterest-bearing transaction accounts enumerated in Schedule O, Memorandum item M5.b, below.
- 5.b** **Number of noninterest-bearing transaction accounts of more than \$250,000.**
Report the total number of noninterest-bearing transaction accounts (as defined in Schedule O, Memorandum item M5, above) with a balance on the report date of more than \$250,000.

DRAFT

**Revised FFIEC 002 Instructions for
Reporting Estimated Uninsured Deposits In Response to
the Dodd-Frank Act's Temporary Unlimited Insurance Coverage on
Noninterest-Bearing Transaction Accounts
(Effective December 31, 2010)**

Schedule O – Other Data for Deposit Insurance Assessments

Memoranda

Item No. Caption and Instruction

2 Estimated amount of uninsured assessable deposits in the branch, including related interest accrued and unpaid.

Schedule O, Memorandum item M2, is to be completed by branches with \$1 billion or more in total claims on nonrelated parties.

Report the estimated amount of the branch's deposits that is not covered by federal deposit insurance. This estimate should reflect the temporary unlimited insurance coverage on noninterest-bearing transaction accounts¹ (as defined in Schedule O, Memorandum item M5) as well as the deposit insurance limits of \$250,000 for "retirement deposit accounts" (as defined in Schedule O, Memorandum item M1) and \$250,000 for other deposit accounts (exclusive of noninterest-bearing transaction accounts), but without taking into account the effect of the branch's participation in the FDIC's Debt Guarantee Program. The reporting of this uninsured deposit information is mandated by Section 7(a)(9) of the Federal Deposit Insurance Act.

The estimated amount of uninsured deposits reported in this item should be based on the branch's deposits included in Schedule O, item 1, "Total deposit liabilities before exclusions (gross) as defined in Section 3(l) of the Federal Deposit Insurance Act and FDIC regulations," less item 2, "Total allowable exclusions, including interest accrued and unpaid on allowable exclusions (including foreign deposits)." In addition to the uninsured portion of a branch's "Total deposits and credit balances" (reported in Schedule RAL, item 4.a, column A), the estimate of uninsured deposits should take into account all other items included in Schedule O, item 1 less item 2, including, but not limited to:

- Interest accrued and unpaid on deposits and credit balances;
- Deposits of majority-owned depository subsidiaries of the parent foreign bank and the interest accrued and unpaid on such deposits;
- Deposit liabilities that have been reduced by assets netted against these liabilities in accordance with generally accepted accounting principles; and
- Deposits in the insured branch to the credit of the branch's parent foreign bank or any of its offices, branches, agencies, or wholly owned subsidiaries.

The branch's estimate of its uninsured deposits should be reported in accordance with the following criteria. Regardless of these criteria, all noninterest-bearing transaction accounts (as defined in Schedule O, Memorandum item M5) must be treated as insured deposits and excluded from the estimate of uninsured deposits. Furthermore, it is recognized that a

¹ Pursuant to Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, unlimited insurance coverage on noninterest-bearing transaction accounts is in effect from December 31, 2010, through December 31, 2012.

DRAFT

branch may have multiple automated information systems for different types of deposits and that the capabilities of a branch's information systems to provide an estimate of its uninsured deposits will differ from branch to branch at any point in time and, within an individual institution, may improve over time.

- (1) If the branch has deposit accounts whose ownership is based on a fiduciary relationship, Part 330 of the FDIC's regulations generally states that the titling of the deposit account (together with the underlying records) must indicate the existence of the fiduciary relationship in order for insurance coverage to be available on a "pass-through" basis. Fiduciary relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor, or custodian.

A branch with fiduciary deposit accounts with balances of more than \$250,000 must diligently use the available data on these deposit accounts, including data indicating the existence of different principal and income beneficiaries and data indicating that some or all of the funds on deposit represent retirement deposit accounts eligible for \$250,000 in deposit insurance coverage, to determine its best estimate of the uninsured portion of these accounts.

- (2) If the branch has deposit accounts of employee benefit plans, Part 330 of the FDIC's regulations states that these accounts are insured on a "pass-through" basis for the non-contingent interest of each plan participant provided that certain prescribed recordkeeping requirements are met. A branch with employee benefit plan deposit accounts with balances of more than \$250,000 must diligently use the available data on these deposit accounts to determine its best estimate of the uninsured portion of these accounts.
- (3) If the branch has deposit accounts with balances in excess of the federal deposit insurance limit for which it has acquired private deposit insurance to cover this excess amount, the branch should make a reasonable estimate of the portion of these deposits that is not insured by the FDIC using the data available from its information systems.
- (4) For all other deposit accounts, the branch should make a reasonable estimate of the portion of these deposits that is uninsured using the data available from its information systems. In developing this estimate, if the branch has automated information systems in place that enable it to identify jointly owned accounts and estimate the deposit insurance coverage of these deposits, the higher level of insurance afforded these joint accounts should be taken into consideration. Similarly, if the branch has automated information systems in place that enable it to classify accounts by deposit owner and/or ownership capacity, the branch should incorporate this information into its estimate of the amount of uninsured deposits by aggregating accounts held by the same deposit owner in the same ownership capacity before applying the \$250,000 insurance limit. Ownership capacities include, but are not limited to, single ownership, joint ownership, business (excluding sole proprietorships), revocable trusts, irrevocable trusts, and retirement accounts.

In the absence of automated information systems, a branch may use nonautomated information such as paper files or less formal knowledge of its depositors if such information provides reasonable estimates of appropriate portions of its uninsured deposits. A branch's use of such nonautomated sources of information is considered appropriate unless errors associated with the use of such sources would contribute significantly to an overall error in the FDIC's estimate of the amount of insured and uninsured deposits in the banking system.