

**DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency**

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

**DEPARTMENT OF THE TREASURY
Office of Thrift Supervision**

**Agency Information Collection Activities: Submission for OMB Review; Joint
Comment Request**

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the “agencies”) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On March 16, 2011, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on proposed assessment-related reporting revisions to the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, 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), all of which currently are approved collections of information, effective as of the June 30, 2011, report date (76 FR 14460). After considering the comments received on the proposal, the FFIEC and the agencies plan to proceed with the collection of all of the new data items that had been proposed for implementation as of that report date to support the FDIC’s calculation of deposit insurance assessments in accordance with amendments to its assessment regulations that took effect April 1, 2011 (76 FR 10672, February 25, 2011). However, the instructions for certain new data items have been modified in response to comments. In addition, to facilitate reporting by large and highly complex institutions and address their data availability concerns, transition guidance is being provided for reporting subprime consumer loans and securities and leveraged loans and securities.

DATES: Comments must be submitted on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2-3, Attention: 1557-0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-5274, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to “Consolidated Reports of Condition and Income (FFIEC 031 and 041)” or “Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and 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),” by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at:
<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include reporting form number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board’s web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board’s Martin Building (20th and C Streets, NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to “Consolidated Reports of Condition and Income, 3064-0052,” by any of the following methods:

- Agency Web Site: <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the FDIC Web site.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: comments@FDIC.gov. Include “Consolidated Reports of Condition and Income, 3064-0052” in the subject line of the message.

- Mail: Gary A. Kuiper, (202) 898-3877, Counsel, Attn: Comments, Room F-1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E-1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by “1550-0023 (TFR: Schedule DI Revisions),” by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail address: infocollection.comments@ots.treas.gov. Please include “1550-0023 (TFR: Schedule DI Revisions)” in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906-6518.
- Mail: Information Collection Comments, Chief Counsel’s Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: “1550-0023 (TFR: Schedule DI Revisions).”
- Hand Delivery/Courier: Guard’s Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention: Information Collection Comments, Chief Counsel’s Office, Attention: “1550-0023 (TFR: Schedule DI Revisions).”

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002, and FFIEC 002S forms can be obtained at the FFIEC's web site (http://www.ffiec.gov/ffiec_report_forms.htm). Copies of the TFR can be obtained from the OTS's web site (<http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0>).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263-4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898-3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at Ira.Mills@ots.treas.gov, (202) 906-6531, or facsimile number (202) 906-6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise the Call Report, the TFR, the FFIEC 002, and the FFIEC 002S, which currently are approved collections of information.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).
Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).
Frequency of Response: Quarterly.
Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557-0081.

Estimated Number of Respondents: 1,427 national banks.

Estimated Time per Response: 53.38 burden hours.

Estimated Total Annual Burden: 304,693 burden hours.

Board:

OMB Number: 7100-0036.

Estimated Number of Respondents: 826 state member banks.

Estimated Time per Response: 55.47 burden hours.

Estimated Total Annual Burden: 183,273 burden hours.

FDIC:

OMB Number: 3064-0052.

Estimated Number of Respondents: 4,687 insured state nonmember banks.

Estimated Time per Response: 40.47 burden hours.

Estimated Total Annual Burden: 758,732 burden hours.

The estimated times per response shown above for the Call Report represent the estimated ongoing reporting burden associated with the preparation of this report after institutions make the necessary recordkeeping and systems changes that will enable them to generate the data required to be reported in the new assessment-related data items that are the subject of this proposal. The estimated time per response is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). These factors determine the specific Call Report data items in which an individual institution will have data it must report. The average ongoing reporting burden for the Call Report is estimated to range from 17 to 700 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title:* Thrift Financial Report (TFR).
Form Number: OTS 1313 (for savings associations).
Frequency of Response: Quarterly; Annually.
Affected Public: Business or other for-profit.

OTS:

OMB Number: 1550-0023.

Estimated Number of Respondents: 724 savings associations.

Estimated Time per Response: 60.3 hours average for quarterly schedules and 1.6 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Total Annual Burden: 182,166 burden hours.

3. *Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; 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
Form Numbers: FFIEC 002; FFIEC 002S

Board:

OMB Number: 7100-0032

Frequency of Response: Quarterly

Affected Public: U.S. branches and agencies of foreign banks

Estimated Number of Respondents: FFIEC 002 - 236; FFIEC 002S - 57

Estimated Time per Response: FFIEC 002 - 25.43 hours; FFIEC 002S - 6 hours

Estimated Total Annual Burden: FFIEC 002 - 24,003 hours; FFIEC 002S - 1,368 hours

As previously stated with respect to the Call Report, the burden estimates shown

above are for the quarterly filings of the Call Report, the TFR, and the FFIEC 002 and 002S reports. The initial burden arising from implementing recordkeeping and systems changes to enable insured depository institutions to report the applicable assessment-related data items that would be added to these regulatory reports will vary significantly. For the vast majority of the nearly 7,600 insured depository institutions, including the smallest institutions, this initial burden will be nominal because only three of the new data items will be relevant to them and the amounts to be reported can be carried over from amounts reported elsewhere in the report.

At the other end of the spectrum, many of the new data items are to be reported solely by about 110 large and highly complex institutions (as defined in the FDIC's assessment regulations). To achieve consistency in reporting across this group of institutions, the instructions for the new data items applicable only to these institutions, which are drawn directly from definitions contained in the FDIC's assessment regulations (as amended in February 2011), are prescriptive. Transition guidance has been provided for the two categories of higher-risk assets (subprime and leveraged loans) for which large and highly complex institutions have indicated that their data systems do not currently enable them to identify individual assets meeting the FDIC's definitions that will be used for assessment purposes only. The transition guidance provides time for large and highly complex institutions to revise their data systems to support the identification and reporting of assets in these two categories on a going-forward basis. The guidance also permits these institutions to use existing internal methodologies developed for supervisory purposes to identify existing assets (and, in general, assets acquired during the transition period) that would be reportable in these higher-risk asset categories on an ongoing basis.

Comments submitted in response to the agencies' initial PRA notice, published on March 16, 2011, that addressed the initial burden that large and highly complex institutions would incur to identify assets meeting the definitions of subprime and leveraged loans in the FDIC's assessment regulations were written in the context of applying these definitions to all existing loans. The transition guidance created for these loans is intended to mitigate the initial data capture and systems burden that institutions would otherwise incur. Thus, the initial burden associated with implementing the recordkeeping and systems changes necessary to identify assets reportable in these two higher-risk asset categories will be significant for the approximately 110 large and highly complex institutions, but the agencies are currently unable to estimate the amount of this initial burden. Large and highly complex institutions will also experience additional initial burden in connection with implementing systems changes to support their ability to report the other new assessment-related items applicable to such institutions. However, given their focus on subprime and leveraged loans, respondents to the agencies' initial PRA notice offered limited comments about the burden of the other new items for large and highly complex institutions.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, the Call Report, the TFR, and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. § 552(b)(4)].

Abstracts

Call Report and TFR: Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, identifying areas of focus for both on-site and off-site examinations, and monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data also are used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

FFIEC 002 and FFIEC 002S: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data also are used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions (including, but not limited to, decisions with regard to lending or asset management or funding or liability management) or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

Type of Review: Revision of currently approved collections of information.

Current Actions

I. Overview

On March 16, 2011, the agencies published an initial PRA notice in which they requested comment on proposed revisions to their regulatory reports: the Call Report, the TFR, the FFIEC 002, and the FFIEC 002S (76 FR 14460).¹ The agencies proposed to implement certain changes to these reports as of June 30, 2011, to provide data needed by the FDIC to implement amendments to its assessment regulations (12 CFR part 327) that were adopted by the FDIC Board of Directors in a final rule on February 7, 2011.² The final rule took effect for the quarter beginning April 1, 2011, and will be reflected for the first time in the invoices for assessments due September 30, 2011, using data reported in institutions' regulatory reports for June 30, 2011. The assessment-related reporting changes will enable the FDIC to calculate (1) the assessment bases for insured depository institutions as redefined in accordance with section 331(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) and the FDIC's final rule, and (2) the assessment rates for "large institutions" and "highly complex institutions" using a scorecard set forth in the final rule that combines CAMELS ratings and certain forward-looking financial measures to assess the risk such institutions pose to the Deposit Insurance Fund (DIF). The FDIC's redefinition of the assessment base was included in a Notice of Proposed Rulemaking (NPR) approved for publication by the FDIC Board on November 9, 2010, the comment period for which ended on January 3, 2011.³ The FDIC initially proposed to revise the assessment system applicable to large insured depository institutions in an NPR with a 60-day comment period that was approved for publication by the FDIC Board on April 13, 2010.⁴ On November 9, 2010, the FDIC Board approved the publication of a second NPR seeking comment through January 3, 2011, on proposed revisions to the assessment system for large insured depository institutions that took into account the redefined assessment base prescribed by the Dodd-Frank Act as well as comments received on the earlier NPR.⁵

The agencies collectively received comments from 19 respondents on their initial PRA notice on the proposed assessment-related reporting requirements published on March 16, 2011. Comments were received from fourteen depository institutions, four bankers' organizations, and one government agency. Three of the bankers' organizations commented on certain aspects of the proposed reporting requirements associated with the redefined assessment base, with one of these organizations welcoming the proposed

¹ <http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf>.

² See 76 FR 10672, February 25, 2011, at <http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf>.

³ See 75 FR 72582, November 24, 2010, at <http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66.pdf>.

⁴ See 75 FR 23516, May 3, 2010, at <http://www.fdic.gov/regulations/laws/federal/2010/10proposead57.pdf>.

⁵ See 75 FR 72612, November 24, 2010, at <http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66LargeBank.pdf>.

reporting changes and deeming them “reasonable and practical.” Seventeen of the 19 respondents (all of the depository institutions and three of the bankers’ organizations) addressed the reporting requirements proposed for large institutions, with specific concerns raised by all 17 about the definitions of subprime consumer loans and leveraged loans in the FDIC’s final rule, which were carried directly into the draft reporting instructions for these two proposed data items, and large institutions’ ability to report the amount of subprime consumer loans and leveraged loans in accordance with the final rule’s definitions, particularly beginning as of the June 30, 2011, report date. The comments the agencies received about the reporting of subprime consumer loans and leveraged loans are more fully discussed later in this notice. Nevertheless, a number of respondents expressed support for the concept of applying risk-based evaluation tools in the determination of deposit insurance assessments, which is an objective of the large institution assessment system under the FDIC’s final rule.

One bankers’ organization offered a general comment about the draft instructions for the proposed new assessment-related data items, recommending that these items “should include references to other related Call Report [, TFR, and FFIEC 002] schedule items, as appropriate” to assist “banks with the edit checks” for the report. Although many of the proposed new data items include such references, others do not. The agencies will review the draft instructions and add relevant references to data items in other schedules.

The following two sections of this notice describe the proposed reporting changes related to the redefined assessment base and the large institution assessment system, respectively, and discuss the agencies’ evaluation of the comments received on the proposed changes. The following sections also explain the modifications that the FFIEC and the agencies have decided to make to the reporting proposal in response to those comments.

In summary, after considering the comments received on the proposed assessment-related reporting revisions, the FFIEC and the agencies plan to move forward as of the June 30, 2011, report date and begin to collect all of the new data items that had been proposed in the notice published on March 16, 2011. In doing so, the agencies are modifying certain aspects of the instructions for some of the new data items in response to comments. Furthermore, in recognition of the data availability concerns arising from the final rule’s definitions of subprime consumer loans and leveraged loans, the agencies are providing transition guidance for reporting loans originated or purchased prior to October 1, 2011, and securities where the underlying loans were originated predominantly prior to October 1, 2011. For such pre-October 1, 2011, loans and securities, if a large or highly complex institution does not have within its data systems the information necessary to determine subprime consumer or leveraged status in accordance with the definitions of these two higher-risk asset categories set forth in the FDIC’s final rule, the institution may use its existing internal methodology for identifying subprime consumer or leveraged loans and securities as the basis for reporting these assets for deposit insurance assessment purposes in its Call Reports or TFRs. Institutions that do not have an existing internal methodology in place to identify subprime consumer

or leveraged loans (because they are not required to report on these exposures to their primary federal regulator for examination or other supervisory purposes or did not measure and monitor loans and securities with these characteristics for internal risk management purposes) may, as an alternative to applying the definitions in the FDIC's final rule to pre-October 1, 2011, loans and securities, apply existing guidance provided by their primary federal regulator, the agencies' 2001 Expanded Guidance for Subprime Lending Programs,⁶ or the February 2008 Comptroller's Handbook on Leveraged Lending⁷ for purposes of identifying subprime consumer and leveraged loans originated or purchased prior to October 1, 2011, and subprime consumer and leveraged securities where the underlying loans were originated predominantly prior to October 1, 2011. All loans originated on or after October 1, 2011, and all securities where the underlying loans were originated predominantly on or after October 1, 2011, must be reported as subprime consumer or leveraged loans and securities according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.⁸

Large and highly complex institutions may need to revise their data systems to support the reporting of newly originated or purchased subprime consumer and leveraged loans and securities for assessment purposes only in accordance with the definitions in the FDIC's final rule on a going-forward basis beginning no later than October 1, 2011. Large and highly complex institutions relying on the transition guidance described above for reporting pre-October 1, 2011, subprime consumer and leveraged loans and securities will be expected to provide the FDIC qualitative descriptions of how the characteristics of the assets reported using their existing internal methodologies for identifying loans and securities in these higher-risk asset categories differ from those specified in the subprime consumer and leveraged loan definitions in the FDIC's final rule, including the principal areas of difference between these two approaches for each higher-risk asset category. The FDIC may review these descriptions of differences and assess the extent to which institutions' existing internal methodologies align with the applicable supervisory policy guidance for categorizing these loans. Any departures from such supervisory policy guidance discovered in these reviews, as well as institutions' progress in planning and implementing necessary data systems changes, will be considered when forming supervisory strategies for remedying departures from existing supervisory policy guidance and exercising deposit insurance pricing discretion for individual large and highly complex institutions.

II. Redefined Assessment Base

On February 7, 2011, the FDIC Board of Directors adopted a final rule that implements the requirements of section 331(b) of the Dodd-Frank Act by amending part 327 of the FDIC's regulations to redefine the assessment base used for calculating

⁶ <http://www.fdic.gov/news/news/press/2001/pr0901a.html>.

⁷ <http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf>.

⁸ For loans purchased on or after October 1, 2011, large and highly complex institutions may apply the transition guidance to loans originated prior to that date. Loans purchased on or after October 1, 2011, that also were originated on or after that date must be reported as subprime or leveraged according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.

deposit insurance assessments effective April 1, 2011.⁹ In general, the FDIC's final rule defines the assessment base as average consolidated total assets during the assessment period less average tangible equity capital during the assessment period. Under the final rule, average consolidated total assets are defined in accordance with the Call Report instructions for Schedule RC-K, Quarterly Averages, and are measured using a daily averaging method. However, institutions with less than \$1 billion in assets (other than newly insured institutions) may use a weekly averaging method for average consolidated total assets unless they opt to report daily averages on a permanent basis. Tangible equity capital is defined in the final rule as Tier 1 capital and average tangible equity will be calculated using a monthly averaging method, but institutions with less than \$1 billion in assets (other than newly insured institutions) may report on an end-of-quarter basis unless they opt to report monthly averages on a permanent basis. Institutions that are parents of other insured institutions will make certain adjustments when measuring average consolidated total assets and average tangible equity separately from their subsidiary institutions. For banker's banks and custodial banks, as defined in the final rule, the FDIC will deduct the average amount of certain low-risk liquid assets from their assessment base. All insured institutions are potentially subject to an increase in assessment rates for their holdings of unsecured debt issued by another insured institution.

Proposed Regulatory Reporting Changes for the Redefined Assessment Base

The implementation of the redefined assessment base will require the agencies to collect some information from insured institutions that is not currently collected on the Call Report, the TFR, or the FFIEC 002 report. These reporting changes would take effect as of the June 30, 2011, report date, which is the first quarter-end report date after the April 1, 2011, effective date of the FDIC's final rule. However, the burden of requiring these new data items will be partly offset by deleting some assessment data items currently collected from these regulatory reports.

The agencies received no comments specifically addressing the following assessment-base-related revisions, which will be implemented as proposed in the Call Report, the TFR, and the FFIEC 002 effective June 30, 2011:

- The proposed deletion of the existing data items for the total daily averages of deposit liabilities before exclusions, allowable exclusions, and foreign deposits.¹⁰
- The proposed addition of a new data item for reporting average consolidated total assets, which should be calculated using the institution's total assets, as defined for Call Report balance sheet (Schedule RC) purposes, except that the calculation should incorporate all debt securities (not held for trading) at amortized cost, equity securities with readily determinable fair values at the lower of cost or fair

⁹ See footnote 2.

¹⁰ The specific items to be deleted are, in the Call Report, existing items 4, 5, and 6 in Schedule RC-O – Other Data for Deposit Insurance and FICO Assessments; in the TFR, existing line items DI540, DI550, and DI560 in Schedule DI – Consolidated Deposit Information; and in the FFIEC 002 report, existing items 4, 5, and 6 in Schedule O – Other Data for Deposit Insurance Assessments.

- value, and equity securities without readily determinable fair values at historical cost.¹¹
- The proposed addition of a new data item for reporting average tangible equity, which is defined as Tier 1 capital.¹²
 - The proposed adjustments to the calculation of average consolidated total assets and average tangible equity for insured depository institutions (IDIs) with consolidated insured depository subsidiaries and for IDIs involved in mergers and consolidations during the quarter.
 - The proposed addition of a yes/no banker’s bank certification question to Call Report Schedule RC-O and TFR Schedule DI and, for a qualifying banker’s bank, new data items for reporting the average amounts of its banker’s bank assessment base deduction (i.e., the sum of the averages of its balances due from the Federal Reserve and its federal funds sold) and its banker’s bank deduction limit (i.e., the sum of the averages of its deposit balances due to commercial banks and other depository institutions in the United States and its federal funds purchased).
 - The proposed addition of a yes/no custodial bank certification question to Call Report Schedule RC-O and TFR Schedule DI and, for a qualifying custodial bank, a new data item for reporting the average amount of its custodial bank assessment base deduction (i.e., the average portion of its cash and balances due from depository institutions, held-to-maturity securities, available-for-sale securities, federal funds sold, and securities purchased under agreements to resell that have a zero percent risk weight for risk-based capital purposes plus 50 percent of the portion of these same five types of assets that have a 20 percent risk weight¹³).
 - The proposed instructional change to the existing Call Report and TFR data items for “Unsecured ‘Other borrowings’” and “Subordinated notes and debentures” with a remaining maturity of one year or less,¹⁴ which would require debt instruments redeemable at the holder’s option within one year to be included in these data items, which are used in the determination of the unsecured debt adjustment when calculating an insured institution’s assessment rate.

The agencies received comments on the following four matters pertaining to the proposed changes to the Call Report, the TFR, and the FFIEC 002 associated with the redefined assessment base: the averaging method to be used for reporting average

¹¹ For an insured branch, average consolidated total assets would be calculated using the total assets of the branch (including net due from related depository institutions), as defined for purposes of Schedule RAL – Assets and Liabilities of the FFIEC 002 report, but with debt and equity securities measured in the same manner as for other insured institutions.

¹² For an insured branch, tangible equity would be defined as eligible assets (determined in accordance with section 347.210 of the FDIC’s regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank’s head office, other branches, agencies, offices, or wholly owned subsidiaries).

¹³ For all insured institutions, the definitions of these five types of assets are found in the instructions for Call Report Schedule RC – Balance Sheet, items 1, 2.a, 2.b, 3.a, and 3.b. In the Call Report, these types of assets are included, as of quarter-end, in items 34 through 37, columns C (zero percent risk weight) and D (20 percent risk weight), of Schedule RC-R – Regulatory Capital. In the TFR, these types of assets are included, as of quarter-end, in line items CCR400, CCR405, CCR409, and CCR 415 (zero percent risk weight) and in line items CCR430, CCR435, CCR440, CCR445, and CCR450 (20 percent risk weight) of Schedule CCR – Consolidated Capital Requirement.

¹⁴ In the Call Report, Schedule RC-O, items 7.a and 8.a, respectively. In the TFR, Schedule DI, line items DI645 and DI655, respectively.

consolidated total assets, the measurement of tangible equity at month-ends other than quarter-end, the types of assets reportable as long-term unsecured debt issued by other insured depository institutions, and the types of deposit accounts included in the custodial bank deduction limit. These comments are discussed in Sections II.A. through II.D below.

A. Averaging Method for Average Consolidated Total Assets – The FDIC’s final rule requires average consolidated total assets to be calculated on a daily average basis by institutions with \$1 billion or more in total assets, all newly insured institutions, and institutions with less than \$1 billion in total assets that elect to do so. Institutions with less than \$1 billion in total assets (that are not newly insured) that do not elect to measure average consolidated total assets on a daily average basis must calculate the average on a weekly average basis.¹⁵ To determine the averaging method used by an institution and its appropriateness under the final rule, the agencies proposed to add a new data item to Call Report Schedule RC-O, TFR Schedule DI, and FFIEC 002 Schedule O in which institutions would report the averaging method used to measure average consolidated total assets, i.e., daily or weekly.

Under the FDIC’s final rule, average consolidated total assets is defined for all insured institutions in accordance with the instructions for item 9, “Total assets,” of Call Report Schedule RC-K – Quarterly Averages. These instructions provide that the averages reported in Schedule RC-K, including the average for consolidated total assets, must be calculated as daily or weekly averages. Similarly, the instructions for reporting quarterly averages in FFIEC 002 Schedule K require daily or weekly average calculations. In contrast, the instructions for reporting quarterly averages in TFR Schedule SI – Supplemental Information, including the average for consolidated total assets, permit the use of month-end averaging as an alternative to daily or weekly averaging when reporting average total assets in line item SI870.

One bankers’ organization recommended in its comment letter that insured institutions with less than \$1 billion in total assets be permitted to report average consolidated total assets as a monthly average as an alternative to daily or weekly averaging. The organization stated that this would minimize the burden placed on some institutions and accommodate institutions with information systems capable of generating only monthly average balances. The agencies note that the averaging method prescribed in the proposed revised assessment-related reporting requirements is driven by the FDIC’s final rule under which monthly average reporting is not permissible for institutions with less than \$1 billion in total assets.¹⁶ In addition, as mentioned above, all insured commercial banks, state-chartered savings banks, and U.S. branches of foreign banks are currently required to calculate quarterly averages for regulatory reporting purposes on a daily or weekly average basis. Only insured savings associations, which

¹⁵ Under the FDIC’s final rule, banker’s banks and custodial banks must calculate their respective assessment base deductions and deduction limits using the same averaging method, daily or weekly, used to calculate average consolidated total assets. Thus, the discussion of averaging methods also applies to these deductions and deduction limits.

¹⁶ See 76 FR 10676-10678, February 25, 2011, for the FDIC’s discussion of average consolidated total assets for purposes of the final rule.

constitute less than 10 percent of insured institutions with less than \$1 billion in total assets, have the option to calculate averages on a monthly, weekly, or daily basis for regulatory reporting purposes. Given the constraints of the FDIC's final rule, the agencies are retaining the daily and weekly averaging methods for reporting average consolidated total assets for assessment purposes for institutions (that are not newly insured) with less than \$1 billion in total assets as well as the proposed new item in which an institution would report the averaging method it has used.

B. Measurement of Average Tangible Equity – Under the FDIC's final rule, tangible equity is defined as Tier 1 capital.¹⁷ Because the final rule redefines the deposit insurance assessment base as average consolidated total assets minus average tangible equity, the agencies proposed to add a new item to Call Report Schedule RC-O, TFR Schedule DI, and FFIEC 002 Schedule O for average tangible equity. The final rule requires average tangible equity to be calculated on a monthly average basis by institutions with \$1 billion or more in total assets, all newly insured institutions, and institutions with less than \$1 billion in total assets that elect to do so. For institutions with less than \$1 billion in total assets (that are not newly insured) that do not elect to calculate average tangible equity on a monthly average basis, "average" tangible equity would be based on quarter-end Tier 1 capital.

One bankers' organization commented that although it "believes it is industry practice for many banks to calculate their risk-based capital numbers on a monthly basis, we do not believe it is industry practice for banks to update their provision/allowance and deferred tax calculations more than quarterly." It observed that "these two items are potentially significant drivers" of the calculation of Tier 1 capital and recommended that "the agencies clarify that they accept that these two drivers may not be updated for the interim monthly capital calculations, and that a quarter-end calculation is acceptable."

The regulatory reports for insured depository institutions, which include regulatory capital data, are prepared as of each calendar quarter-end date during the year. Other than at year-end, these reports would be regarded as interim financial information that is prepared for external reporting purposes. For recognition and measurement purposes, the agencies' regulatory reporting requirements conform to U.S. generally accepted accounting principles (GAAP). According to Accounting Standards Codification paragraph 270-10-45-2, "[i]n general, the results for each interim period shall be based on the accounting principles and practices used by an entity in the preparation of its latest annual financial statements." Thus, institutions are expected to follow this concept when preparing their quarterly regulatory reports, including the determination of the allowance for loan and leases losses and related provision expense and the measurement of current and deferred income taxes.

Month-end averaging for tangible equity in the FDIC's final rule was not intended to impose a fully GAAP-compliant requirement for monthly updating of loan loss allowances and deferred tax calculations for months other than quarter-end. However, the agencies believe that it is a sound practice to accrue provision for loan and lease

¹⁷ See footnote 12.

losses expense and income tax expense on some reasonable basis during the first two months of a quarter and then “true-up” these expenses for the quarter on a GAAP-compliant basis at quarter-end, rather than ignoring these expenses until the final month of the quarter. Therefore, although the agencies acknowledge that institutions’ “provision/allowance and deferred tax calculations” may not be updated at month-ends prior to quarter-end by recording amounts determined in full compliance with GAAP, it would not be acceptable to recognize no provision or income tax expense in the months before quarter-end when an institution reasonably expects that some amount will need to be recognized for the quarter.

C. Long-Term Unsecured Debt Issued by Other Insured Depository Institutions –

As an input to the new Depository Institution Debt Adjustment created in the FDIC’s final rule, the agencies proposed to add an item to Call Report Schedule RC-O, TFR Schedule DI, and FFIEC 002 Schedule O in which institutions would report the amount of their holdings of long-term unsecured debt issued by other insured depository institutions (as reported on the balance sheet). Debt would be considered long-term if it has a remaining maturity of at least one year, except if the holder has the option to redeem the debt within the next 12 months. Unsecured debt includes senior unsecured liabilities and subordinated debt. Senior unsecured liabilities are unsecured liabilities that are reportable as “Other borrowings” by the issuing IDI on its quarterly regulatory report, excluding any such liabilities that the FDIC has guaranteed under the Temporary Liquidity Guarantee Program (12 CFR part 370). Subordinated debt includes subordinated notes and debentures and limited-life preferred stock.

One bankers’ organization requested that the agencies confirm and clarify that long-term unsecured debt issued by other insured depository institutions includes only debt securities reported in certain specific Call Report items (and, presumably, in certain specific items in the TFR and the FFIEC 002). The bankers’ organization stated that such long-term unsecured debt “generally is not separately identified in bank systems” and that “banks would need to retrospectively identify these assets at the instrument level for holdings currently in the systems and put processes in place to ensure that future holdings are identifiable.”

The agencies note that the FDIC received a few comments on the proposed Depository Institution Debt Adjustment aspect of its November 2010 NPR on the redefined assessment base that stated that this adjustment “will result in a reporting burden for insured depository institutions.” The FDIC considered these comments in adopting the final rule and acknowledged that although “some reporting modifications may have to be made at some institutions, the FDIC believes those changes can be accomplished at minimal time and cost.”¹⁸

Holdings of long-term unsecured debt issued by other insured depository institutions are not limited to debt securities; rather, such debt also may be included in an institution’s loans. From a Call Report perspective, loans to depository institutions (unless held for trading) are separately identifiable in bank systems because they have

¹⁸ 76 FR 10682, February 25, 2011.

long been a specific category of loans in the loan schedule (Schedule RC-C, part I), although loans that meet the definition of long-term unsecured debt are not reported separately from other loans in this category. For institutions that file Call Reports, depending on the form of the debt and the intent for which it is held, holdings of long-term unsecured debt issued by other insured depository institutions would be included in Schedule RC-B, item 6.a, “Other domestic debt securities”; Schedule RC-C, part I, item 2, “Loans to depository institutions and acceptances of other banks”; Schedule RC-D, item 5.b, “All other debt securities”; and Schedule RC-D, item 6.d, “Other loans.”¹⁹ For institutions that file TFRs, holdings of long-term unsecured debt issued by other depository institutions would be included in Schedule SC, line item SC185, “Other Investment Securities,” and Schedule SC, line item SC303, Commercial Loans: “Unsecured.” For institutions that file the FFIEC 002, holdings of long-term unsecured debt issued by other depository institutions would be included in Schedule RAL, item 1.c.(4), “All other” bonds, notes, and debentures; Schedule RAL, item 1.f.(4), “Other trading assets”; and Schedule C, item 2, “Loans to depository institutions and acceptances of other banks.” The agencies will clarify the instructions for the new item for holdings of long-term unsecured debt issued by other insured depository institutions by referencing the other items elsewhere in the report where these debt holdings are included.

D. Custodial Bank Deduction Limit – Consistent with the FDIC’s final rule, an institution that is a custodial bank is permitted to report the average amount of certain low-risk assets, which the FDIC will deduct from its assessment base up to a specified limit. For an institution that is a qualifying custodial bank, the agencies proposed that the institution would report the average amount of (1) qualifying low-risk assets and (2) transaction account deposit liabilities identified by the institution as being directly linked to a fiduciary, custody, or safekeeping account at the institution, which is the limit for the assessment base deduction.

As defined in Federal Reserve Regulation D, a “transaction account” is defined in general as a domestic office deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instruments, payment orders of withdrawal, telephone transfers, or other similar devices for the purpose of making payments or transfers to third persons or others or from which the depositor may make third party payments at an automated teller machine, a remote service unit, or another electronic device, including by debit card. For purposes of determining and reporting the custodial bank deduction limit, a foreign office deposit liability with the preceding characteristics also would be treated as a transaction account. For a transaction account to fall within the scope of the custodial bank deduction limit, the titling of the transaction account or specific references in the deposit account documents should clearly demonstrate the link between the transaction account and a fiduciary, custodial, or safekeeping account.

¹⁹ For an institution that files a Call Report but does not complete Schedule RC-D – Trading Assets and Liabilities, long-term unsecured debt issued by other insured depository institutions that is held for trading is included in Schedule RC, item 5, “Trading assets.”

Two bankers' organizations commented on the scope of the custodial bank deduction limit. The agencies proposed that a qualifying custodial bank's deduction limit should include foreign office deposit liabilities with the characteristics of a transaction account, as defined in Regulation D, that are linked to a fiduciary, custody, or safekeeping account when reporting the deduction limit. Both bankers' organizations recommended that the foreign office deposits eligible for inclusion in the deduction limit be expanded to include "short-term time deposit accounts (usually 1-7 days)" that are used on occasion in lieu of transaction accounts to "provide cash management features for the client and are not part of a wealth management strategy." In addition, both organizations recommended that the agencies permit escrow accounts, Interest on Lawyers Trust Accounts (IOLTAs),²⁰ and other trust and custody-related accounts, which may be held in transaction accounts or short-term time deposit accounts, to be included in the deduction limit because they are operational in nature and not related to wealth management.

In adopting the final rule, the FDIC considered whether the custodial bank deduction limit should encompass all deposits or just transaction accounts linked to a fiduciary, custody, or safekeeping account and decided that the limit should be confined to transaction accounts. Furthermore, in describing the nature of the transaction accounts upon which the deduction limit should be based, the FDIC stated that the accounts should be those used for payments and clearing purposes in connection with fiduciary, custody, and safekeeping accounts. This would include, for example, transaction accounts used to pay for securities or other assets purchased for such accounts. Accordingly, the agencies have concluded that, consistent with the FDIC's final rule, deposits reported in the new item for the deduction limit should exclude short-term time deposits. Similarly, given the constraints of the FDIC's final rule, escrow accounts, IOLTAs, and other trust and custody-related deposit accounts related to commercial bank services, or otherwise offered outside a custodial bank's fiduciary business unit or another distinct business unit devoted to institutional custodial services, cannot be included in the accounts falling within the scope of the custodial bank deduction limit.

III. Risk-Based Assessment System for Large Insured Depository Institutions

The final rule adopted by the FDIC Board of Directors on February 7, 2011, also amends the assessment system applicable to large insured depository institutions to better capture risk at the time the institution assumes the risk, better differentiate risk among large institutions during periods of good economic and banking conditions based on how they would fare during periods of stress or economic downturns, and better take into account the losses that the FDIC may incur if a large institution fails.²¹ As previously stated, the final rule took effect for the quarter beginning April 1, 2011, and will be reflected for the first time in the invoices for assessments due September 30, 2011, using data reported in institutions' regulatory reports for June 30, 2011.

²⁰ An IOLTA is an interest-bearing account maintained by a lawyer or law firm for clients. The interest from these accounts is not paid to the law firm or its clients, but rather is used to support law-related public service programs, such as providing legal aid to the poor. See 73 FR 72256, November 26, 2008.

²¹ See footnote 2.

Under the FDIC’s final rule, assessment rates for large institutions will be calculated using a scorecard that combines CAMELS ratings and certain forward-looking financial measures to assess the risk a large institution poses to the DIF. One scorecard will apply to most large institutions and another scorecard will apply to a subset of large institutions that are structurally and operationally complex or pose unique challenges and risk in the case of failure (highly complex institutions). In general terms, a large institution is an IDI with total assets of \$10 billion or more whereas a highly complex institution is an IDI (other than a credit card bank²²) with total assets of \$50 billion or more that is controlled by a U.S. holding company that has total assets of \$500 billion or more or an IDI that is a processing bank or trust company.²³

The scorecard for large institutions (other than highly complex institutions) produces two scores – a performance score and a loss severity score – that are converted into a total score. The performance score, which measures a large institution’s financial performance and its ability to withstand stress, is a weighted average of the scores for three components: (1) weighted average CAMELS rating score; (2) ability to withstand asset-related stress score, which is itself a weighted average of the scores for four measures; and (3) ability to withstand funding-related stress score, which is a weighted average of the scores for two measures. The loss severity score measures the relative magnitude of potential losses to the FDIC in the event of a large institution’s failure by applying a standardized set of assumptions (based on recent failures) regarding liability runoffs and the recovery value of asset categories.

For highly complex institutions, there is a different scorecard with measures tailored to the risks these institutions pose. However, the structure and much of the scorecard for a highly complex institution are similar to the scorecard for other large institutions because it contains both a performance score and a loss severity score. The performance score for highly complex institutions is the weighted average of the scores for the same three components as for large institutions: (1) weighted average CAMELS rating score; (2) ability to withstand asset-related stress score; and (3) ability to withstand funding-related stress score. However, the measures contained in the latter two components for highly complex institutions differ from those for large institutions. For highly complex institutions, the score for the ability to withstand asset-related stress is the weighted average of the scores for four measures, two of which differ from those used to calculate large institutions’ asset-related stress score, and the score for the ability to withstand funding-related stress is the weighted average of the scores for three measures, the first two of which also are used to calculate large institutions’ funding-related stress score.

²² As defined in the FDIC’s final rule, a credit card bank is an IDI for which credit card receivables plus securitized receivables exceed 50 percent of assets plus securitized receivables.

²³ See sections 327.8(f), (g), and (s) of the FDIC’s regulations for the full definitions of the terms “large institution,” “highly complex institution,” and “processing bank or trust company,” respectively. Under both the FDIC’s final rule and the FDIC’s assessment regulations in effect before April 1, 2011, an insured U.S. branch of a foreign bank is a “small institution” regardless of its total assets.

The method for calculating the total score for large institutions and highly complex institutions is the same. Once the performance and loss severity scores are calculated for a large or highly complex institution, these scores are converted to a total score. Each institution's total score is calculated by multiplying its performance score by a loss severity factor derived from its loss severity score. The total score is then used to determine the initial base assessment rate for each large institution and highly complex institution.

For complete details on the scorecards for large institutions and highly complex institutions, including the measures used in the calculation of performance scores and loss severity scores, see the FDIC's final rule.²⁴

Proposed Regulatory Reporting Changes for the Revised Risk-Based Assessment System for Large Institutions and Highly Complex Institutions

Most of the data used as inputs to the scorecard measures for large institutions and highly complex institutions are available from the Call Reports and TFRs filed quarterly by these institutions, but the data items needed to compute scorecard measures for criticized and classified items, higher-risk assets, top 20 counterparty exposures, and the largest counterparty exposure are not available from the Call Reports and TFRs. With the revised risk-based assessment system for these institutions under the FDIC's final rule taking effect in the second quarter of 2011, the agencies proposed that large and highly complex institutions begin to report the new data items needed as inputs to their respective scorecards in their Call Reports and TFRs beginning June 30, 2011.²⁵ In addition, certain other data items that will be used in the scorecards for large institutions are not currently reported in the TFR by savings associations. Thus, the agencies also proposed to add these data items to the TFR as of June 30, 2011, and they would be reported by savings associations that are large institutions or report \$10 billion or more in total assets as of that or a subsequent quarter-end date. Currently, there are about 110 insured depository institutions with \$10 billion or more in total assets that would be affected by some or all of the additional reporting requirements, of which about 20 are savings associations.

The agencies received no comments specifically addressing the following proposed data items that would support the revised risk-based assessment system for large institutions and highly complex institutions, which will be implemented as proposed in the Call Report and the TFR effective June 30, 2011:

- For seven categories of funded loans, new data items to be completed by large institutions for the portion of the balance sheet amount that is guaranteed or

²⁴ See footnote 2.

²⁵ No savings associations are expected to meet the definition of a highly complex institution. Accordingly, the agencies proposed to add the new data items for highly complex institutions only to the Call Report and not to the TFR. If a savings association were to become a highly complex institution before its proposed conversion from filing TFRs to filing Call Reports effective March 31, 2012 (see 76 FR 7082, February 8, 2011), the FDIC would collect the necessary data directly from the savings association.

- insured by the U.S. government, including its agencies and its government-sponsored agencies, other than by the FDIC under loss-sharing agreements.²⁶
- New data items for large and highly complex institutions for the unused portion of commitments to fund construction, land development, and other land loans secured by real estate (in domestic offices) and for the portion of these unfunded commitments that is guaranteed or insured by the U.S. government, including by the FDIC.
 - A new data item for large and highly complex institutions for the amount of other real estate owned (ORE) that is recoverable from the U.S. government, including its agencies and its government-sponsored agencies, under guarantee or insurance provisions, excluding any ORE covered under FDIC loss-sharing agreements.
 - A new data item for large and highly complex institutions for the amount of their nonbrokered time deposits of more than \$250,000.
 - New TFR data items for savings associations that are large institutions (or report \$10 billion or more in total assets in their June 30, 2011, or a subsequent TFR) that would provide data used in the scorecards for large institutions that are not currently reported in the TFR by savings associations, but are reported in the Call Report by banks, including the fair value of trading assets and liabilities included in various balance sheet asset and liability categories reported in TFR Schedule SC as well as data on certain securities, loans, deposits, borrowings, and loan commitments.²⁷

In contrast, as mentioned above, all 14 of the depository institutions and three of the bankers' organizations that commented on the proposed assessment-related reporting changes raised concerns about the reporting requirements for subprime consumer loans and leveraged loans. In addition, one depository institution and two bankers' organizations offered comments on other aspects of the proposed reporting requirements for large institutions and highly complex institutions. These comments are discussed in Sections III.A through III.F below.

As stated earlier in this notice, the FDIC previously provided the banking industry opportunities to comment on all of the measures and definitions of the measures used within the scorecard for large insured depository institution pricing purposes through the publication of two separate NPRs in May and November 2010.²⁸ During the 2010-2011 rulemaking process, the FDIC received numerous recommendations to refine and clarify scorecard measures and definitions. The FDIC staff considered all of these

²⁶ The seven loan categories are (1) construction, land development, and other land loans secured by real estate (in domestic offices), (2) loans secured by multifamily residential and nonfarm nonresidential properties (in domestic offices), (3) closed-end first lien 1-4 family residential mortgages (in domestic offices) and non-agency residential mortgage-backed securities, (4) closed-end junior lien 1-4 family residential mortgages and home equity lines of credit (in domestic offices), (5) commercial and industrial loans, (6) credit card loans to individuals for household, family, and other personal expenditures, and (7) other consumer loans. Highly complex institutions would report the new item for the portion of the balance sheet amount of construction, land development, and other land loans secured by real estate (in domestic offices) that is guaranteed or insured by the U.S. government, other than by the FDIC.

²⁷ For further information on these new TFR data items, see 76 FR 14469, March 16, 2011.

²⁸ See footnotes 3 and 4.

recommendations and finalized the definitions that were included in the final rule redefining the assessment base and revising the assessment system for large insured depository institutions that was approved by the FDIC Board on February 7, 2011. With the exception of some of the data availability issues discussed below, most of the comments received in response to this regulatory reporting proposal are not new recommendations and had already been considered by the FDIC during the 2010-2011 rulemaking process prior to issuance of the final rule.

The FDIC further notes that the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in its February 2011 final rule (the FDIC assessment definitions) are applicable only for purposes of deposit insurance assessments. The FDIC assessment definitions are not identical to the definitions included in existing supervisory guidance pertaining to these types of loans.²⁹ Rather, the FDIC assessment definitions are more prescriptive and less subjective than those contained in the applicable supervisory guidance. The final rule includes prescriptive definitions to ensure that large and highly complex institutions apply a uniform and consistent approach to the identification of loans to be reported as higher-risk assets for assessment purposes and used as inputs to the scorecards that determine their initial base assessment rates.

Given the specific and limited purpose for which the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in the FDIC's final rule on assessments will be used, these definitions will not be applied for supervisory purposes. Therefore, the definitions of these three types of loans in the FDIC's final rule on assessments do not override or supersede any existing interagency or individual agency guidance and interpretations pertaining to subprime lending, leveraged loans, and nontraditional mortgage loans that have been issued for supervisory purposes or for any other purpose other than deposit insurance assessments. In this regard, the addition of data items to the Call Report and TFR deposit insurance assessment schedules for these three higher-risk asset categories, the definitions for which are taken directly from the FDIC's final rule (subject to the transition guidance discussed above), represents the outcome of decisions by the FDIC in its assessment rulemaking process rather than a collective decision of the agencies through interagency supervisory policy development activities.

A. Data Availability for Reporting Subprime Consumer Loans and Leveraged Loans – The agencies proposed that two new items be added to the Call Report and the TFR for the balance sheet amount of subprime consumer loans and leveraged loans. The definitions to be used for these two asset categories for regulatory reporting purposes were taken from Appendix C of the FDIC's final rule.³⁰ These two new items would be completed by large institutions and highly complex institutions.

²⁹ Interagency Expanded Guidance for Subprime Lending Programs, issued in January 2001 (<http://www.fdic.gov/news/news/press/2001/pr0901a.html>); Comptroller's Handbook: Leveraged Loans, issued in February 2008 (<http://www.occ.gov/static/publications/handbook/leveragedlending.pdf>); and Interagency Guidance on Nontraditional Mortgage Product Risks, issued in October 2006 (<http://www.fdic.gov/regulations/laws/federal/2006/06NoticeFINAL.html>).

³⁰ See 76 FR 10722-10724, February 25, 2011.

According to Appendix C, subprime loans include:

loans made to borrowers that display one or more of the following credit risk characteristics (excluding subprime loans that are previously included as nontraditional mortgage loans) at origination or upon refinancing, whichever is more recent.

- Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;
- Judgment, foreclosure, repossession, or charge-off in the prior 24 months;
- Bankruptcy in the last 5 years; or
- Debt service-to-income ratio of 50 percent or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.¹¹

Subprime loans also include loans identified by an insured depository institution as subprime loans based upon similar borrower characteristics and securitizations where more than 50 percent of assets backing the securitization meet one or more of the preceding criteria for subprime loans, excluding those securities classified as trading book.

¹¹ <http://www.fdic.gov/news/news/press/2001/pr0901a.html>; however, the definition in the text above excludes any reference to FICO or other credit bureau scores.

The amount to be reported for subprime loans would include purchased credit impaired loans³¹ that meet the definition of a subprime loan in the FDIC's final rule, but would exclude amounts recoverable on subprime loans from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions. The final rule defines subprime loans as those that meet the criteria for being subprime at origination or refinancing, whichever is more recent, and excludes loans that have deteriorated subsequent to origination or refinancing.

As described in Appendix C of the FDIC's final rule, leveraged loans include:

(1) all commercial loans (funded and unfunded) with an original amount greater than \$1 million that meet any one of the conditions below at either origination or renewal, except real estate loans; (2) securities issued by commercial borrowers that meet any one of the conditions below at either origination or renewal, except securities classified as trading book; and (3) securitizations that are more than 50 percent collateralized by assets that meet any one of the conditions below at either origination or renewal, except securities classified as trading book.^{4,5}

³¹ The definition of purchased credit impaired loans is found in Financial Accounting Standards Board Accounting Standards Codification Subtopic 310-30, Receivables – Loans and Debt Securities Acquired with Deteriorated Credit Quality (formerly AICPA Statement of Position 03-3, “Accounting for Certain Loans or Debt Securities Acquired in a Transfer”).

- Loans or securities where borrower's total or senior debt to trailing twelve-month EBITDA⁶ (i.e. operating leverage ratio) is greater than 4 or 3 times, respectively. For purposes of this calculation, the only permitted EBITDA adjustments are those adjustments specifically permitted for that borrower in its credit agreement; or
- Loans or securities that are designated as highly leveraged transactions (HLT) by syndication agent.⁷

⁴ The following guidelines should be used to determine the "original amount" of a loan:

- (1) For loans drawn down under lines of credit or loan commitments, the "original amount" of the loan is the size of the line of credit or loan commitment when the line of credit or loan commitment was most recently approved, extended, or renewed prior to the report date. However, if the amount currently outstanding as of the report date exceeds this size, the "original amount" is the amount currently outstanding on the report date.
- (2) For loan participations and syndications, the "original amount" of the loan participation or syndication is the entire amount of the credit originated by the lead lender.
- (3) For all other loans, the "original amount" is the total amount of the loan at origination or the amount currently outstanding as of the report date, whichever is larger.

⁵ Leveraged loans criteria are consistent with guidance issued by the Office of the Comptroller of the Currency in its Comptroller's Handbook, <http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf>, but do not include all of the criteria in the handbook.

⁶ Earnings before interest, taxes, depreciation, and amortization.

⁷ <http://www.fdic.gov/news/news/press/2001/pr2801.html>.

Institutions would report the balance sheet amount of leveraged loans that have been funded. Unfunded amounts include the unused portions of irrevocable and revocable commitments to make or purchase leveraged loans. The amount to be reported for leveraged loans would include purchased credit impaired loans, but would exclude amounts recoverable on leveraged loans from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions. Under the FDIC's final rule, a commercial loan will be considered leveraged for assessment purposes only if it meets one of two conditions at origination or renewal, but excludes loans that have deteriorated subsequent to origination or renewal.

In their comments on the proposed reporting requirements for large institutions and highly complex institutions, 14 depository institutions and three bankers' organizations stated that institutions do not have data on subprime and leveraged loans in the manner in which these categories of loans are defined in the FDIC's final rule or do not have the ability to capture the prescribed data on subprime and leveraged loans in time to file their June 2011 regulatory reports and attest to the correctness of the reports. Some of these commenters recommended that the agencies allow large and highly complex institutions to delay the initial reporting of subprime and leveraged loans until the industry and other agencies can work with the FDIC to revise the definitions contained in the FDIC's assessment regulations. Other commenters recommended that large and highly complex institutions be allowed to use their own internal methodologies for identifying subprime and leveraged loans, arguing that these methodologies have been reviewed by regulatory agencies as part of the examination process.

In presenting their views on the definitions of subprime and leveraged loans contained in the FDIC's final rule that were carried forward into the draft reporting instructions, commenters cited various aspects of the definitions that they found troublesome, made a number of recommendations regarding the definitions, and suggested that large and highly complex institutions be permitted to use their own internal methodologies for identifying such loans rather than the definitions in the final rule.

With respect to the subprime consumer loan definition in the FDIC's final rule, several commenters stated that the FDIC's departure from the subprime definition in the agencies' 2001 Expanded Guidance for Subprime Lending Programs (2001 Guidance) is problematic because it changed the process for identifying subprime loans from one that allowed flexibility to one in which a list of specific characteristics must be considered. Thus, the final rule's definition mandates the credit quality characteristics that must be considered, whereas the 2001 Guidance provides that these same characteristics "may" be considered in identifying loans as subprime. Some commenters stated that the definition does not allow for limited exceptions for prime borrowers with minor or isolated credit issues. Several commenters, including one bankers' organization, requested that large and highly complex institutions be allowed to determine their subprime exposures by using a credit scoring algorithm or system (developed either internally or by a vendor) that measures a borrower's probability of default. One commenter stated that loans should only be identified as subprime when they are originated, not when they are refinanced. In addition, one commenter requested that the agencies clarify the scope of the exclusion from reporting for amounts recoverable on subprime loans from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions.³²

The agencies note that the FDIC issued two NPRs in 2010 that gave institutions and the industry opportunities to comment twice on the subprime definition. Compared to the definition of subprime in its May 2010 NPR, the FDIC removed the word "may" from this definition and made the definition more prescriptive when it issued the November 2010 NPR to ensure uniformity and consistency in the identification of loans to be reported as subprime for deposit insurance assessment purposes. The publication of the November 2010 NPR provided an opportunity for institutions and the industry to comment on the FDIC's more prescriptive subprime loan definition, but the FDIC received no comments regarding the removal of the word "may" from the subprime loan definition. The FDIC believes that a prescriptive definition is necessary for purposes of setting assessment rates for large and highly complex institutions. When developing the subprime loan definition that would apply to the scorecards for large and highly complex institutions in the final rule, the FDIC used certain elements of the existing supervisory guidance, but it modified the definition proposed for assessment purposes in the November 2010 NPR in response to industry comments. As explained in the preamble

³² Although this comment was made only with respect to subprime consumer loans, this exclusion is also applicable to certain other proposed new items for large and highly complex institutions.

for the final rule,³³ the FDIC decided to remove the credit score threshold from the list of potential credit risk characteristics of a subprime borrower because there may be differences among various models that the credit rating bureaus use. In addition, the FDIC viewed reliance on credit scoring models that are controlled by credit rating bureaus as undesirable because these models may be changed at the discretion of the credit rating bureaus. The FDIC concluded that the credit risk characteristics included in the final rule's subprime loan definition represent information an institution should be able to capture during the loan underwriting process, which would therefore enable the institution to identify consumer loans as subprime based on the specified characteristics.

As mentioned above, one commenter requested clarification – in the context of subprime loans – of the exclusion from reporting for amounts recoverable from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions. The FDIC's final rule includes this exclusion not just for subprime loans, but for each loan concentration category. To clarify the scope of this exclusion, examples include guarantees or insurance (or reinsurance) provided by the Department of Veterans Affairs, the Federal Housing Administration, the Small Business Administration (SBA), the Department of Agriculture Rural Development Loan Program, and the Department of Education for individual loans as well as coverage provided by the FDIC under loss-sharing agreements. For loan securitizations and securities, examples include those guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as SBA Guaranteed Loan Pool Certificates and securities covered by FDIC loss-sharing agreements. However, if an institution holds securities backed by mortgages it has transferred to Fannie Mae or Freddie Mac with recourse or other transferor-provided enhancements, these securities should not be considered guaranteed to the extent of the institution's maximum contractual credit exposure arising from the enhancements.

With respect to the proposed data item for leveraged loans, several commenters recommended that the definition be modified so that it only applies to loans where the proceeds are used for buyouts, acquisitions, and recapitalizations. A number of commenters also objected to the FDIC's prescription in the final rule of one specific "bright-line" financial metric – debt to EBITDA – to determine whether a loan is leveraged, arguing that a single financial metric is too simplistic and does not consider the risk characteristics of borrowers in different industries. One commenter suggested collateral protection be considered in the definition. Another commenter suggested that securities and securitizations backed by leveraged loans should be excluded from the leveraged loan definition. This commenter also questioned the proposed instructional language stating that undrawn credit lines should be considered fully drawn when calculating debt to EBITDA ratios because this treatment penalizes borrower leverage, especially because undrawn commitments are often not drawn.

The FDIC's definition of leveraged loans in the final rule for large and highly complex institution deposit insurance pricing purposes is the result of several

³³ See 76 FR 10692, February 25, 2011.

modifications to the original definition proposed by the FDIC in the NPRs published by the FDIC in May 2010 and November 2010. The final rule includes modifications to the proposed definition that were made in response to comments received from the industry during the comment periods on the two NPRs. Commenters on the November 2010 notice recommended that the purpose of a loan should not be used as an independent condition for identifying the loan as leveraged, stating that a loan that is made “for buyout, acquisition, and recapitalization” is not implicitly risky and ignores the current financial condition of the borrower. As it prepared the leveraged loan definition for inclusion in the final rule, the FDIC agreed, in part, with this assessment and concluded that the amount of borrower leverage, rather than the purpose of a loan, should dictate whether or not the loan is leveraged and thus possesses higher risk. The higher-risk asset concentration measure in the scorecards for large and highly complex institutions is designed to capture this elevated risk. As further noted in the preamble for the final rule,³⁴ the FDIC believes that some bright-line metrics are necessary to ensure that institutions take a uniform approach to identifying loans to be reported as leveraged for assessment purposes. The FDIC used the metrics outlined in the February 2008 Comptroller’s Handbook on Leveraged Lending (Handbook)³⁵ as the initial basis for its definition; however, to ensure consistency among institutions, the leveraged loan definition in the FDIC’s final rule is more prescriptive than the Handbook guidance. However, the FDIC and the agencies have considered the comment opposing the inclusion of undrawn credit lines in the debt to EBITDA metrics and are removing this provision from the draft instructions for reporting leveraged loans. Finally, for purposes of the final rule’s definition of leveraged loans, the FDIC concluded that the inclusion of securities and securitizations within the definition of leveraged lending is consistent with the concept of a comprehensive concentration measure, which should include the total exposure arising from assets that share a particular set of characteristics.

The agencies acknowledge commenters’ concerns about the definitions of subprime consumer loans and leveraged loans in the FDIC’s final rule and the ability of large and highly complex institutions to report the amounts of these two categories of higher-risk assets in accordance with the final rule’s definitions, particularly beginning with the June 30, 2011, report date. In consideration of these concerns, the agencies have agreed to provide transition guidance for the reporting of subprime consumer loans and leveraged loans. As more fully explained in Section I above, for loans originated or purchased prior to October 1, 2011, and securities where the underlying loans were originated predominantly prior to October 1, 2011, for which a large or highly complex institution does not have within its data systems the information necessary to determine subprime consumer or leveraged status in accordance with the definitions of these two higher-risk asset categories in the FDIC’s final rule, the institution may use its existing internal methodology for identifying subprime consumer or leveraged loans for purposes of reporting these assets in its Call Reports or TFRs. Institutions that do not have an existing internal methodology in place to identify subprime consumer or leveraged loans may, as an alternative to applying the definitions in the FDIC’s final rule to pre-October 1, 2011, loans and securities, apply existing guidance provided by their primary federal

³⁴ See 76 FR 10692, February 25, 2011.

³⁵ <http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf>.

regulator, the agencies' 2001 Expanded Guidance for Subprime Lending Programs,³⁶ or the February 2008 Comptroller's Handbook on Leveraged Lending³⁷ for purposes of identifying subprime consumer and leveraged loans originated or purchased prior to October 1, 2011, and subprime consumer and leveraged securities where the underlying loans were originated predominantly prior to October 1, 2011. All loans originated on or after October 1, 2011, and all securities where the underlying loans were originated predominantly on or after October 1, 2011, must be reported as subprime consumer or leveraged loans and securities according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.³⁸

B. Criticized and Classified Items – The agencies proposed to add separate data items to the Call Report for the amount of items designated Special Mention, Substandard, Doubtful, and Loss.³⁹ These four data items would be completed by large institutions and highly complex institutions and would cover both on- and off-balance sheet items that are criticized and classified. These data items are now collected on a confidential basis from all savings associations on the TFR in Schedule VA – Consolidated Valuation Allowances and Related Data in line items VA960, VA965, VA970, and VA975.

According to Appendix A of the FDIC's final rule:

Criticized and classified items include items an institution or its primary federal regulator have graded "Special Mention" or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments.² Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

² A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA⁴⁰ plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

Saving associations that are large institutions or highly complex institutions would complete existing line items VA960, VA965, VA970, and VA975 in accordance with the preceding Appendix A guidance rather than the existing TFR instructions for

³⁶ <http://www.fdic.gov/news/news/press/2001/pr0901a.html>.

³⁷ <http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf>.

³⁸ See footnote 8.

³⁹ Loss items would include any items graded Loss that have not yet been written off against the allowance for loan and leases losses (or another valuation allowance) or charged directly to earnings, as appropriate.

⁴⁰ Credit Support Annex.

these four line items. All other savings associations would continue to follow the existing TFR instructions for these four line items.

Comments were received from one depository institution and two bankers' organizations on the proposed reporting of criticized and classified items. One commenter expressed concerns about the comparability of criticized and classified totals that would be reported by different institutions, stating that some institutions may be conservative and "over-report" the amount of criticized and classified items while other institutions may be willing to take on more risk and "under-report" the amount of such items. This commenter requested assurances that items will be judged similarly across all institutions. This commenter also requested that the agencies clarify the meaning of "unfunded loans" as used in the definition of criticized and classified items. Another commenter requested that the phrase "less credit valuation adjustments" be removed from the definition to ensure consistency with information on criticized and classified items currently reported to the OCC by many institutions. The third commenter similarly recommended that institutions report the same data in the new items for criticized and classified items that they currently submit to their primary federal regulator. In this regard, both of these commenters cited the "Fast Data Reporting Form" used for this purpose by OCC-regulated institutions.

The agencies have developed uniform definitions for criticized and classified items and these definitions have been utilized for many years.⁴¹ Additionally, the agencies expect the classifications or grades assigned to an institution's credit exposures to be subject to review and validation as part of the institution's internal control processes and by the institution's primary federal regulator as part of an ongoing supervisory program. In this regard, an institution that maintains a credit grading system that differs from the agencies' framework for criticized and classified items is expected to maintain documentation that translates the institution's system into the framework used by the agencies. This documentation should be sufficient to enable examiners to reconcile the totals for the various credit grades under the institution's system to the agencies' categories of criticized and classified items. Thus, the agencies believe that there is comparability across institutions in designating items as criticized or classified. Nevertheless, the FDIC will consider the effectiveness of an institution's internal credit grading system, generally as determined by the institution's primary federal regulator, when making adjustments to an institution's total score for purposes of setting assessment rates for large and highly complex institutions.

As used in the definition of criticized and classified items, the term "unfunded loans" represents the amount that the borrower is entitled to draw upon as of the quarter-end report date, i.e., the unused commitment as defined in the instructions to Call Report Schedule RC-L, item 1. The agencies will clarify the instructions accordingly.

⁴¹ See the Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks and Thrifts issued by the OCC, the Board, the FDIC, and the OTS in June 2004 at <http://www.fdic.gov/news/news/financial/2004/fil7004.html>. The 2004 agreement replaced an interagency agreement with the same title that was issued in 1979 and had its origins in interagency guidance issued in 1938.

Lastly, for purposes of measuring the actual risk exposure to a large or highly complex institution from a criticized and classified marked-to-market counterparty position under its final rule, the FDIC concluded that it is appropriate to reduce the counterparty position by any applicable credit valuation adjustment. Not requiring an institution to apply credit valuation adjustments to its marked-to-market counterparty positions could potentially result in over-reporting the amount of criticized and classified items. However, a large or highly complex institution that has not previously measured its marked-to-market counterparty positions net of any applicable credit valuation adjustments for purposes of reporting criticized and classified items internally and to its primary federal regulator may report these positions in this same manner for deposit insurance assessment purposes in the Call Report or TFR, particularly if the institution concludes that updating its reporting systems to net these adjustments would impose an undue burden on the institution.

C. Nontraditional Mortgage Loans – The agencies proposed to add a data item to the Call Report and the TFR for the balance sheet amount of nontraditional 1-4 family residential mortgage loans, including certain securitizations of such mortgages. The data item would be completed by large institutions and highly complex institutions. As described in Appendix C of the FDIC’s final rule, nontraditional mortgage loans include all:

residential loan products that allow the borrower to defer repayment of principal or interest and includes all interest-only products, teaser rate mortgages, and negative amortizing mortgages, with the exception of home equity lines of credit (HELOCs) or reverse mortgages.^{8, 9, 10}

For purposes of the higher-risk concentration ratio, nontraditional mortgage loans include securitizations where more than 50 percent of the assets backing the securitization meet one or more of the preceding criteria for nontraditional mortgage loans, with the exception of those securities classified as trading book.

⁸ For purposes of this rule making, a teaser-rate mortgage loan is defined as a mortgage with a discounted initial rate where the lender offers a lower rate and lower payments for part of the mortgage term.

⁹ <http://www.fdic.gov/regulations/laws/federal/2006/06noticeFINAL.html>

¹⁰ A mortgage loan is no longer considered a nontraditional mortgage once the teaser rate has expired. An interest only loan is no longer considered nontraditional once the loan begins to amortize.

The amount to be reported for nontraditional mortgage loans for deposit insurance assessment purposes would include purchased credit impaired loans, but would exclude amounts recoverable on nontraditional mortgage loans from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

One depository institution and two bankers’ organizations requested certain clarifications of the scope of the nontraditional mortgage loan data item. More specifically, these commenters asked whether nontraditional mortgages include

conventional amortizing adjustable rate mortgages (ARMs) and residential construction loans on which the borrower is required to make only interest payments during the construction period and whether nontraditional mortgages can be reclassified as traditional loans when they begin to fully amortize. One commenter requested clarification of the term “discounted initial rate” as used in the nontraditional mortgage loan definition. This commenter also asked whether the teaser-rate mortgage loan definition applied to all ARMs or only to those that permit negative amortization. Another commenter recommended either removing the reference to teaser rates from the nontraditional mortgage loan definition or changing the definition to be consistent with existing regulatory definitions. This commenter cited the description of teaser rates in the OTS’s 2011 Examination Handbook.⁴²

The FDIC based the definition of nontraditional mortgage loans in the final rule on the October 2006 Interagency Guidance on Nontraditional Mortgage Product Risks.⁴³ Nevertheless, the agencies agree that certain clarifications of the definition are appropriate for purposes of reporting the amount of nontraditional mortgage loans in the Call Report and TFR. The agencies will revise the draft reporting instructions to state that nontraditional mortgage loans do not include residential construction loans on which the borrower is required to pay only interest or conventional fully amortizing ARMs that do not have a teaser rate. However, ARMs that have a teaser rate that has not expired would be considered nontraditional mortgage loans for deposit insurance assessment purposes. In addition, the reporting instructions will be clarified to state that nontraditional mortgages can be reclassified as traditional loans once they become fully amortizing loans, provided they do not have a teaser rate. Finally, the reporting instructions will indicate that a loan has a teaser rate, i.e., a discounted initial rate, when the loan’s effective interest rate at the time of origination or refinance is less than the rate the bank is willing to accept for an otherwise similar extension of credit with comparable risk.

D. Counterparty Exposures – The agencies proposed to add new items to the Call Report for the total amount of an institution’s 20 largest counterparty exposures and the amount of the institution’s largest counterparty exposure, which would be completed only by highly complex institutions. According to Appendix A of the FDIC’s final rule:

Counterparty exposure is equal to the sum of Exposure at Default (EAD) associated with derivatives trading and Securities Financing Transactions (SFTs) and the gross lending exposure (including all unfunded commitments) for each counterparty or borrower at the consolidated entity level [of the counterparty].¹

¹ EAD and SFTs are defined and described in the compilation issued by the Basel Committee on Banking Supervision in its June 2006 document, “International Convergence of Capital Measurement and Capital Standards.” The definitions are described in detail in Annex 4 of the document. Any updates to the Basel II capital treatment of counterparty credit risk would be implemented as they are adopted. <http://www.bis.org/publ/bcbs128.pdf>

⁴² <http://www.ots.treas.gov/?p=ExaminationHandbook>.

⁴³ See 71 FR 58609, October 4, 2006.

When measuring counterparty exposure for deposit insurance pricing purposes, highly complex institutions should exclude exposure amounts arising from due from accounts, federal funds sold, investments in debt and equity securities, and credit protection purchased or sold where the counterparty under consideration is the reference entity.

Two bankers' organizations requested that, for purposes of the two counterparty exposure data items, highly complex institutions be permitted to use the same EAD amounts for derivatives and SFTs as reported in the schedules of Form FFIEC 101, Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, produced for their Basel II "parallel run." These organizations argued that a requirement to produce EADs under a different methodology would be burdensome and inconsistent with the risk associated with these exposures. One bankers' organization suggested that a second-best alternative to using the EAD amounts reported in the Form FFIEC 101 would be to use the asset amounts reported on an institution's balance sheet.

The agencies believe that the appropriate method for measuring the counterparty risk of derivatives and SFTs for deposit insurance pricing purposes is the methodology prescribed by a highly complex institution's primary federal regulator to implement Annex 4 of the Basel Committee's "International Convergence of Capital Measurement and Capital Standards."⁴⁴ To the extent that a highly complex institution has not met the requirements to use an internal modeling method under Basel II (i.e., the institution has not received approval for its internal model from its primary federal regulator), the institution should report EAD amounts for assessment purposes using the alternative methods described in the risk-based capital standards issued by its primary federal regulator, which may differ from the EAD amounts reported in the Form FFIEC 101.

E. Treatment of Loans Held for Trading When Reporting Higher-Risk Asset Categories – One bankers' organization noted that "for several new reporting items (e.g. nontraditional mortgage loans, subprime consumer loans, and leveraged loans) . . . securities included in the definition of higher-risk assets exclude those securities held for trading purposes." The organization recommended that loans held for trading also be excluded from these higher-risk asset items, consistent with the treatment of securities held for trading.

The agencies agree that there should be a consistent treatment of securities and loans held for trading for deposit insurance pricing purposes. Therefore, a large or highly complex institution should exclude loans that would otherwise fall within the scope of the definitions of nontraditional mortgage loans, subprime consumer loans, and leveraged loans, but are reported as trading assets in its Call Report or TFR, from the amounts reported for these higher-risk asset categories. The agencies will revise the instructions for these three data items accordingly.

⁴⁴ For FDIC-supervised banks: 12 CFR part 325, appendix D, section 32; for national banks: 12 CFR part 3, appendix C, section 32; and for state member banks: 12 CFR part 208, appendix F, section 32.

F. Confidential Treatment for Certain Data Items for Large Institutions and Highly Complex Institutions – The proposed data items for criticized and classified items, nontraditional mortgage loans, subprime consumer loans, leveraged loans, top 20 counterparty exposures, and largest counterparty exposure are currently gathered for the FDIC’s use through examination processes at large and highly complex institutions and are treated as confidential examination information. The agencies proposed to obtain these data items directly from each large or highly complex institution in its regular quarterly regulatory report (Call Report or TFR) and use the reported data as inputs to scorecard measures. Because the agencies continue to regard these items as examination information, the information would continue to be accorded confidential treatment when collected via the Call Report and TFR.

The agencies received comments from two bankers’ organizations supporting the confidential treatment of the proposed examination-related data items identified above. However, they recommended that the agencies collect these data items on a new Call Report Schedule RC-O, part II, rather than within the Memorandum section of Schedule RC-O, which also contains data items that are not accorded confidential treatment, and in a similarly segregated section of the TFR. According to these organizations, the suggested reformatting of these data items would more efficiently facilitate the agencies’ ability to remove the examination-related data items from the Call Report and the TFR before making the reports available to the public. In addition, one bankers’ organization requested confirmation from the agencies that any change to the confidential treatment of these data items be published in the Federal Register.

The agencies currently accord confidential treatment to selected data items in the Call Report and the TFR. These data items are located in various schedules within these two reports and, except for two TFR schedules that in their entirety receive confidential treatment, these data items are not segregated from other data items that are publicly available. Data items designated as confidential, regardless of their location within the Call Report or the TFR, are flagged as such within the agencies’ data systems that generate the versions of the Call Report and the TFR that are made available to the public on the Internet at <https://cdr.ffiec.gov/public/ManageFacsimiles.aspx>. Accordingly, based on their experience with existing confidential items in the Call Report and the TFR, the agencies do not believe it is necessary to move the examination-related data items to a new Call Report Schedule RC-O, part II, or a similarly segregated section of the TFR to ensure that the agencies do not make the information reported in these data items available to the public.

The agencies confirm that if they decide at a future date to begin making any of the examination-related data items publicly available, such a proposed change will be published for public comment in the Federal Register. The agencies have followed this practice in the past when changing the status of a data item from confidential to publicly available.

One bankers' organization requested that the FDIC restrict access to the Assessment Rate Calculator on the FDIC's Web site,⁴⁵ which is publicly available, "to persons authorized by the institution to calculate its own assessment rates." The organization recommended this action because "the spreadsheet is automatically populated by data from a bank's Call Report, providing the user [who enters a bank's FDIC certificate number] with an estimate of the bank's assessment rate." The organization expressed concern that the new data items used as inputs to the scorecards for large and highly complex institutions that would be accorded confidential treatment under the agencies' proposal "would be able to be viewed by the public if they have access to the certificate number of a bank."

Restricting access to the Assessment Rate Calculator to authorized personnel at individual institutions is not necessary. Inputs to the calculator that are designated as confidential Call Report and TFR data items are not downloaded into the calculator when a user enters an institution's FDIC Certificate Number into the calculator's data entry worksheet. Only those data items that are publicly available are automatically downloaded into the calculator. All confidential data items must be manually entered into the appropriate worksheet cells by the user in order for the calculator to work.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

- (a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;
- (b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

⁴⁵ See <http://www.fdic.gov/deposit/insurance/calculator.html>.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE AND REQUEST FOR COMMENT, "AGENCY INFORMATION COLLECTION ACTIVITIES: SUBMISSION FOR OMB REVIEW; JOINT COMMENT REQUEST," FOR THE CONSOLIDATED REPORTS OF CONDITION AND INCOME, THRIFT FINANCIAL REPORT, REPORT OF ASSETS AND LIABILITIES OF U.S. BRANCHES AND AGENCIES OF FOREIGN BANKS, AND 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]

Dated: _____

Michele Meyer,
*Assistant Director, Legislative and Regulatory Activities Division,
Office of the Comptroller of the Currency.*

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE AND REQUEST FOR COMMENT, "AGENCY INFORMATION COLLECTION ACTIVITIES: SUBMISSION FOR OMB REVIEW; JOINT COMMENT REQUEST," FOR THE CONSOLIDATED REPORTS OF CONDITION AND INCOME, THRIFT FINANCIAL REPORT, REPORT OF ASSETS AND LIABILITIES OF U.S. BRANCHES AND AGENCIES OF FOREIGN BANKS, AND 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]

Board of Governors of the Federal Reserve System, _____, 2011.

Jennifer J. Johnson
Secretary of the Board.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE AND REQUEST FOR COMMENT, “AGENCY INFORMATION COLLECTION ACTIVITIES: SUBMISSION FOR OMB REVIEW; JOINT COMMENT REQUEST,” FOR THE CONSOLIDATED REPORTS OF CONDITION AND INCOME, THRIFT FINANCIAL REPORT, REPORT OF ASSETS AND LIABILITIES OF U.S. BRANCHES AND AGENCIES OF FOREIGN BANKS, AND 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]

Dated at Washington, D.C., this _____ day of _____, 2011.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman
Executive Secretary

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE AND REQUEST FOR COMMENT, "AGENCY INFORMATION COLLECTION ACTIVITIES: SUBMISSION FOR OMB REVIEW; JOINT COMMENT REQUEST," FOR THE CONSOLIDATED REPORTS OF CONDITION AND INCOME, THRIFT FINANCIAL REPORT, REPORT OF ASSETS AND LIABILITIES OF U.S. BRANCHES AND AGENCIES OF FOREIGN BANKS, AND 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]

Dated: _____

Ira L. Mills,
Paperwork Clearance Officer,
Office of Chief Counsel,
Office of Thrift Supervision

Billing Codes

OCC: 4810-33-P 1/4
Board: 6210-01-P 1/4
FDIC: 6714-01-P 1/4
OTS: 6720-01-P 1/4