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American Bankers Association
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Chief Counsel's Office, Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Via email

Re: Proposed Interagency Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts *(Docket OCC-2022-0017; FDIC RIN 3064-ZA33)*

To Whom It May Concern:

The American Bankers Association (ABA[1]) appreciates the opportunity to comment on the Proposed Interagency Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts (the Proposal). The Proposal updates the 2009 policy statement by recognizing the recent elimination of accounting for troubled debt restructurings (TDRs, through FASB's Accounting Standards Update (ASU) No. 2022–02, which also introduces new disclosure requirements for "modifications to borrowers experiencing financial difficulty" (MBEFD)) and the implementation of the CECL accounting standard. ABA welcomes and supports the agencies in their efforts to provide updated guidance to the industry. Specifically, as the 2009 policy statement includes several helpful examples that relate to loan classification, impairment measurement, and TDR and nonaccrual status, ABA welcomes the Proposal's inclusion of new examples related to loan accommodations.

A consistent and coordinated approach is needed for the replacement of TDRs and the use of MBEFD across interagency guidance and regulatory reporting.

The CECL accounting standard and the elimination of TDRs provide significant changes and challenges to accounting and risk management practice. Often recognized as a backstop for the identification of current loan impairment and the measurement of lifetime losses within the incurred loss accounting standard, the TDR accounting process (and its related metrics) has historically been a significant aspect of loan quality and risk assessments. This has now largely been rendered irrelevant, as the CECL standard requires all loans, impaired or not, be measured

[1] The American Bankers Association is the voice of the nation's $23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $19.6 trillion in deposits and extend $11.8 trillion in loans..

with a lifetime loss assumption. Considering this, the Proposal, when read in light of the recent Call Report changes, appears to reflect thinking that is still “in process”, leaving many references to TDRs in place and appearing to equate MBEFDs with TDRs for reporting purposes. With this in mind, we recommend the agencies coordinate the Proposal and call report changes with a forward-looking approach that looks holistically at the reporting and risk management objectives. Specifically, the agencies should communicate a vision as to what loan modification metrics will now mean to bankers, to examiners as they perform their inspections and CAMELS ratings, as well as to the FDIC, who now must exclude reported TDRs from its assessment formula.

With this in mind, below are our specific recommendations when considering a post-TDR reporting regime:

Guidance for post-TDR Accounting should exclude TDR analysis.

The examples in the Proposal often include both the bank and examiner conclusions on the TDR assessment. However, effective on January 1, 2023, TDR accounting will be eliminated. As a result, the activities covered in this policy statement will no longer be subject to a TDR assessment, rendering the Proposal’s TDR-related guidance obsolete. Overlap between the accounting rules for TDRs and the Proposal (whether explicit or not) should be clarified. For example, under the expiring guidance, the term “below market interest rate” is an example of a concession that can determine whether a modification qualifies as a TDR. In the Proposal, the term is used as a factor when considering loan grading. With this in mind, the term is defined in the expiring standard[2] but not defined in the Proposal or within other guidance that utilizes the term. Estimating a market interest rate is a complex analysis, but can be even more so in less standardized loans, like CRE loans. A specific example or clarification around a market interest rate in a post-TDR environment may alleviate confusion.

Call reporting relating to CRE modifications should be included in a final policy statement

In the event that there are new reporting requirements related to MBEFDs, the Proposal should include guidance and examples to the extent that any assessments are needed as part of the commercial real estate loan accommodations or workouts.

MBEFD metrics should not be considered as equivalent replacements for TDRs.

ABA is eagerly awaiting proposed changes to the Call Report to recognize the elimination of TDRs. ABA acknowledges the FFIEC released Supplemental Instructions for June 2022 Call Reports that substitute TDR reporting with MBEFDs[3]. As the Agencies make changes to incorporate ASU 2022-02, ABA cautions that MBEFD amounts are not a replacement for TDRs

[2] ASC 310-40-15-9 c2 “a stated rate interest rate lower than the market rate for new debt with similar risk.”

[3] “all loans modified since adoption of the new standard for borrowers experiencing financial difficulty as defined by ASU 2022-02 that are performing in accordance with their modified terms to be reported on Schedule RC-C, Part I, Memorandum items 1.a. through 1.g. If a loan is not performing in accordance with its modified terms, it would be reported on Schedule RC-N, Memorandum items 1.a through 1.g.”

and the related metric will provide different information. As a result, the agencies must determine how they will use MBFED information and calibrate accordingly.

MBEFDs are not analogous to TDRs for a few reasons. First, MBEFD under ASU 2022-02 serve as a disclosure mechanism that includes modified assets that did not involve a concession given to the borrower and, thus, would not be classified as a TDR. Second, the aggregate balance of MBEFDs, unlike that for TDRs (which is cumulative), reflects an activity and volume measure over a set period of time, whereas TDR amounts indicate a portfolio balance at a given point in time. More specifically, the MBEFD balance represents modification activity during the reporting period and subsequent performance of modifications on a 12-month trailing period. It is meant to capture how a bank manages its loan portfolio in the reporting period, not to communicate a risk profile for the loan portfolio. Any related credit risk is captured and reported in the Allowance for Credit Losses within the CECL process. As a result, while TDR amounts provide incremental information of credit risk under the incurred loss accounting method, MBEFD amounts provide no similar incremental information under CECL.

ABA also notes that banks conduct loan modifications to suit the needs of their customers and the banks' operations. Thus, MBEFDs could vary dramatically between institutions, as the amount will be a direct function of how banks execute their individual loss mitigation policies. A bank may disclose higher modification amounts solely because its policies provide flexibility in working with borrowers. Consequently, the volume of MBEFDs will not provide a reliable comparison of loan quality between banks. Without clarification as to how such information will be assessed by examiners and simply substituting MBEFD for TDRs could also penalize banks for being proactive with modifications. Disincentivizing such risk mitigation and customer assistance would seem to be at odds with the intent of the Proposal.

Full implementation of ASU 2022-02 may uncover operational challenges and limitations within the post-TDR reporting regime.

Further complicating policy statement changes to incorporate ASU 2022-02 is that banks are in early stages of implementing ASU 2022-02, so the effects of any changes cannot be appraised properly. Therefore, it may be appropriate to wait until the operational impacts of ASU 2022-2 are more fully understood and then reassess if additional updates are needed beyond those in the Proposal.

Thank you for your attention to these matters and for considering our views. Please feel free to contact the undersigned (jstein@aba.com; 202-663-5318) if you would like to discuss our views.

Sincerely,

[redacted]

Joshua Stein