BANK POLICY INSTITUTE

April 30, 2024

Via Electronic Mail

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, D.C. 20219

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

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

Re: Reporting of MBEFD for Q1 2024 Call Reports and FR Y-9C.

To Whom It May Concern:

The Bank Policy Institute[1] is writing to provide comments to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency regarding the reporting of modifications to borrowers experiencing financial difficulty (MBEFD) on the Consolidated Reports of Condition and Income (Call Reports) and the FR Y-9C. In light of the supplemental instructions issued for reporting as of March 31, 2024, for both the Call Reports and

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1 The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

the FR Y-9C, and in the absence of a final rule on the latest Call Report reporting proposal,[2] there is the potential for differing interpretations as to how MBEFDs should be reported on these regulatory reports.

Our comments herein are intended to inform the Agencies that many firms plan to report MBEFDs on the Call Report using a 12 month lookback window that is consistent with U.S. GAAP financial statement disclosures in accordance with ASU 2022-02.[3] This reporting treatment would be consistent with U.S. GAAP, a reasonable interpretation of the Agencies' actions and notices following the adoption of ASU 2022-02, and the most recent March 2024 Call Report[4] and FR Y-9C[5] Supplemental Instructions. Firms that choose to report MBEFDs in accordance with U.S. GAAP on these reports are currently planning to continue doing so prior to the effectiveness of a final rule on the 2023 TDR Replacement Call Report Proposal, a proposal and final rule on reporting on the FR Y-9C, or any subsequent developments.

ASU No. 2022–02[6] eliminated the recognition and measurement guidance for TDRs for institutions that have adopted the Current Expected Credit Losses methodology and introduced new disclosure requirements for MBEFDs. Prior to the adoption of CECL, a TDR had a different credit loss recognition measurement than other loans and once a credit was considered to be a TDR, it would remain a TDR and be reported as such for the life of the loan. However, under CECL, all loans are measured under a lifetime loss recognition model and therefore separate TDR accounting is no longer needed. The new FASB standard requires the disclosure of the type and financial effect of MBEFDs for the current reporting period, and receivable performance in the 12 months after a modification.[7] Prior to finalizing ASU 2022-02, FASB contemplated longer time periods for MBEFDs. However, FASB ultimately decided to limit the required disclosures to those for modifications made in the previous 12 month period, noting that a longer lookback period "may not provide decision-useful information."[8] Further, as ASU 2022-02 does not require disclosures for modifications beyond a 12 month lookback period, many banks generally retired their processes to track modifications over the remaining life of the loan once they adopted the new guidance.

While the U.S. GAAP reporting treatment for MBEFDs is clear following the issuance of ASU 2022-02, the regulatory reporting instructions for MBEFDs on the Call Report and FR Y-9C have not yet been finalized. In July 2022 the FDIC issued a proposal to incorporate the TDR accounting standards

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2 88 Fed. Reg. 66933.

3 FASB, Accounting Standards Update No. 2022-02, available at https://www.fasb.org/Page/ShowPdf?path=ASU+2022-02.pdf.

4 Federal Reserve, March 2024 Call Report Supplemental Instructions, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202403.pdf.

5 Federal Reserve, March 2024 Y-9C Supplemental Instructions, available at https://www.federalreserve.gov/apps/reportingforms/Download/DownloadAttachment?guid=9efc2448-46e1-4870-870b-b08e8c55e39e

6 FASB, *Accounting Standards Update No. 2022-02,* available at https://www.fasb.org/Page/ShowPdf?path=ASU+2022-02.pdf.

7 *Id* at 12.

8 *Id* at 62.

update into the FDIC Assessments framework.[9] Several commenters, including BPI,[10] requested instructional clarification that any reporting requirement for MBEFDs be aligned with ASU 2022-02, specifying the requirement of a 12 month trailing calculation, as opposed to cumulative totals. The FDIC released the final rule in October 2022 with an effective date of January 1, 2023, however the rule provided no further clarity on the regulatory reporting treatment of MBEFDs deferring instead to the not yet determined regulatory reporting treatment for MBEFDs. Although, the FDIC provided language indicating concerns for the 12 month GAAP standard by noting that, in their view, MBFEDs indicate an elevated credit risk and that the risk "is not necessarily eliminated within a given time frame, such as a 12 month period."[11] Ultimately, the FDIC stated that they "and other members of the Federal Financial Institutions Examination Council (FFIEC) are planning to revise the Call Report forms and instructions to replace the current TDR terminology with updated language from ASU 2022-02 for the first quarter of 2023."[12]

In the first quarter of 2023, the Agencies issued a proposal[13] to update the Call Reports but did not include the replacement of TDRs with MBFEDs. Similarly, the Federal Reserve issued a proposal to update the FR Y-9 report series, and also did not include revisions related to ASU 2022-02. BPI responded to these proposals[14] and, among other items, strongly advocated that the Agencies adopt the U.S. GAAP 12 month time period for the regulatory reporting of MBEFDs as opposed to requiring cumulative reporting, noting that the U.S. GAAP standard is sufficient and incorporation of a non-GAAP standard into regulatory reports for the reasons noted therein.

In September 2023, the Agencies issued their proposal to revise the Call Reports regarding ASU 2022-02 and the reporting of MBEFDs.[15] Accounting for the prior comments of BPI and other commenters, this proposal notably did not include a cumulative standard for the reporting of MBEFDs. Rather, the Agencies proposed to "require reporting of these modifications for a minimum period of 12 months and until an institution performs a current, well documented credit evaluation to support that the borrower is no longer experiencing financial difficulty."[16] BPI submitted comments to the proposal[17] supporting the lack of a cumulative reporting standard that would be unnecessary and burdensome and the consideration of a 12 month reporting period in accordance with ASU 2022-02, but also urging that the final reporting standard not include any credit evaluation requirement. As stated in BPI's comment letter, such a requirement would diverge from U.S. GAAP and existing credit risk management practices and impose significant costs and burdens on financial institutions that are not justified by any commensurate benefit. The burden on reporting firms for a cumulative requirement to report MBEFDs

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9 87 Fed. Reg. 45023.

10 BPI, *Assessments, Amendments to Incorporate Troubled Debt Restructuring Accounting Standards Update,* available at https://bpi.com/wp-content/uploads/2022/08/ABA-BPI-Response-to-FDIC-NPR-to-Replace-TDRs-in-Large-Bank-Assessments-Scorecards.pdf.

11 87 Fed. Reg. 64348 at 64351.

12 *Id.* at 64350.

13 88 Fed. Reg. 10644.

14 BPI, *Call Report and FFIEC 002 Revisions,* available at https://bpi.com/bpi-comments-on-banking-agencies-proposed-revisions-to-call-reports-and-fr-y-9/

15 88 Fed. Reg. 66933.

16 *Id.* at 66937.

17 BPI, *Call Report and FFIEC 002 Revisions,* available at https://bpi.com/bpi-recommends-call-report-changes-to-address-troubled-debt-restructuring/

would be similar to that of requiring firms to continue reporting lifetime TDRs for assessment purposes, which the FDIC considered and rejected in the final FDIC Assessment rule.[18]

Throughout 2023, in the absence of a final rule from the Agencies, firms have reported MBEFDs on the Call Report and FR Y-9C in accordance with the quarterly supplemental instructions for each form. For each quarter, the Call Report Supplemental instructions have stated "for Call Report purposes, institutions should report all loans modified since adoption of the new standard to borrowers experiencing financial difficulty that are performing in accordance with their modified terms on Schedule RC-C, Part I, Memorandum items 1.a. through 1.g."[19] Similar language was provided for the FR Y-9C quarterly supplemental instructions as well.[20] Importantly, for all quarterly reports in 2023, these instructions were aligned with U.S. GAAP reporting as the replacement of TDRs with MBEFDs was effective as of January 1, 2023 and therefore there was no discrepancy between cumulative reporting of MBEFDs and use of a 12 month lookback period. The upcoming Q1 2024 Call Report and FR Y-9C reporting of MBEFDs is critical for firms as it would be the first possible that that there would be a divergence between utilizing a cumulative standard and following the 12 month lookback window prescribed by U.S. GAAP.

Significantly, the supplemental instructions for the March 2024 Call Report differ from the supplemental instructions that existed throughout 2023. The March 2024 Call Report Supplemental Instructions removed the word "all" from the language quoted in the above paragraph.[21] This change from prior quarters' supplemental instructions could be read as an indication that the Agencies recognize that all loans modified since the adoption of ASU-2022 will no longer be reported as some of these loans will no longer be within the U.S. GAAP 12 month window. This interpretation of an intent to align with U.S. GAAP is further supported by the extensive discussion of ASU 2022-02, ASC Topic 326, and their effective dates contained in the supplemental instructions.

This view is further supported by the March 2024 FR Y-9C Supplemental Instructions,[22] which explicitly state that "respondents that report loan modifications to borrowers experiencing financial difficulty may use any lookback window that extends at least 12 months (e.g., respondents may report modifications in a manner that is consistent with GAAP financial statement disclosures[)]."[23] This explicit guidance for the FR Y-9C, considered with the revisions made to the Call Report Supplemental Instructions made above and the lack of a cumulative reporting requirement in the 2023 TDR Replacement Call Report Proposal, is consistent with the interpretation that firms are able to report MBEFDs using a 12 month lookback window, consistent with U.S. GAAP for the reporting of MBEFDs on the Call Reports. In addition, this approach creates alignment between the FR Y-9C and the Call Reports,

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18 *Supra* note 9, at 45026.

19 Federal Reserve, December 2023 Call Report Supplemental Instructions, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202312.pdf.

20 Federal Reserve, December 2023 Y-9C Supplemental Instructions, available at https://www.federalreserve.gov/apps/reportingforms/Download/DownloadAttachment?guid=e84c65ce-db25-4951-8ab6-23a8f5021a74.

21 *Supra* note 4.

22 *Supra* note 5.

23 *Id* at 2.

eliminating the need for dual processes and greatly reducing the operational burden on firms as noted in the prior BPI comment letters.

For the foregoing reasons, we are informing the Agencies that many firms plan to report MBEFDs on the Call Report using a 12 month lookback window that is consistent with U.S. GAAP financial statement disclosures in accordance with ASU 2022-02. This reporting treatment would be consistent with U.S. GAAP, a reasonable interpretation of the Agencies' actions and notices following the adoption of ASU 2022-02, and the most recent March 2024 Call Report and FR Y-9C Supplemental Instructions. Additionally, we urge the Agencies to align the guidance in the final notice for the Call Reports, as well as in any proposal and final rule for the Y-9C, to the U.S. GAAP standard utilizing a 12 month lookback period for reporting, without the need for an additional credit evaluation.

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If you have any questions, please contact the undersigned by phone at 202.589.1932 or by email at jack.stump@bpi.com.

Respectfully submitted,

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