BANK POLICY INSTITUTE

September 21, 2020

Via Electronic Mail

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
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington D.C. 20429

Re: Call Report, FFIEC 101, and FFIEC 002 Revisions

To Whom it May Concern:

The Bank Policy Institute[1] welcomes the opportunity to comment on the Proposal by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency to revise the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051), Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002).[2]

BPI appreciates the agencies' efforts to eliminate ambiguity in reporting and to resolve issues stemming from the temporary revisions to the Call Reports that were previously implemented under

1 The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

2 85 Fed. Reg. 44361 (July 22, 2020).

emergency approval from the U.S. Office of Management and Budget.[3] Our letter highlights a few areas that require further clarification and explanation from the agencies, specifically with regard to the proposed revisions to the Call Reports related to the Federal Reserve's Interim Final Rule amending Regulation D to delete the numeric limits on transfers and withdrawals that may be made each month from the definition of "savings deposits" (Regulation D IFR).[4] In addition to these requests for clarification, our recommendations presented herein would alleviate some of the operational burden associated with the proposed revisions and overall reporting on the Call Reports.

I. Call Report and FR 2900 reporting should be aligned to eliminate unnecessary burden.

Following the agencies' proposed revisions in July to the Call Reports to reflect the recent Regulation D IFR, the Federal Reserve proposed revisions to the FR 2900 reporting form, which also include changes in response to the Regulation D IFR.[5] Specifically, the proposed changes to the FR 2900 would consolidate the reporting of deposits, which ignores the distinction between savings deposits and transaction accounts for the purposes of reporting. As proposed, for daily FR 2900 reporting, firms would be required to report ATS accounts, NOW accounts/share drafts, and telephone and preauthorized transfer accounts together with total savings deposits (including MMDAs) in the single line item of "Other liquid deposits." Additionally, for the annual June 30 submission of the FR 2900, the Federal Reserve has proposed to streamline the form to collect only the data items needed to accurately index the reserve requirement exemption amount and low reserve tranche amount in a new line item "New Transaction Accounts," which also consolidates demand deposits, NOW accounts, ATS accounts, telephone and preauthorized transfer accounts together with savings deposits.

While we continue to support a more streamlined FR 2900 report,[6] this proposed treatment of deposits in the FR 2900 creates a significant misalignment with the Call Reports. Despite the Proposal's revisions to the Call Reports, firms will still report transaction and nontransaction accounts separately in Schedule RC-E, with all transaction accounts listed in Columns A and B and nontransaction accounts in Column C. Further, firms will still be required to provide additional granular data on savings deposits in the memoranda section of Schedule RC-E, all of which is in stark contrast to the proposed consolidated FR 2900 reporting. Similarly, in the Call Reports, firms are instructed to report their retail sweeps arrangements by reporting the transaction account and nontransaction account (usually a savings deposit account) components separately. Under the proposed revisions to the FR 2900, there is no such differentiation and all sweep arrangements would be reported as transaction accounts. While the proposed revisions remove optionality in the reporting of savings deposits on the Call Reports if an institution has removed the transfer limits on its saving account, the Regulation D IFR does not require firms to suspend enforcement of the six-transfer limit on accounts classified as "savings deposits."[7] If a

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[3] *See* Federal Financial Institutions Examination Council, 2Q2020 COVID-19 Related Supplemental Instructions (Call Report), *available at* https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202006.pdf.

[4] 85 Fed. Reg. 23445 (April 28, 2020).

[5] 85 Fed. Reg. 54577 (September 2, 2020).

[6] *See* the Bank Policy Institute and Consumer Bankers Association Letter re: Regulation D Reserve Requirements of Depository Institutions (June 29, 2020).

[7] Further clarification to this effect was provided by the Federal Reserve in its Savings Deposits Frequently Ask Questions.

firm does not elect to suspend the transfer limit, reporting of savings deposits would go unchanged in the Call Reports. However, with the newly proposed revisions to the FR 2900, the same firm would be reporting certain deposits as transaction accounts on the FR 2900, that would also be reported as savings deposits on the Call Report.

These are some of the many interseries differences between the Call Reports and the FR 2900 that would arise in light of the two proposals and would ultimately present a number of challenges and an associated increase in burden for respondents. Such interseries differences create burden by eliminating the potential for cross-report reconciliation and other efficiencies and by requiring separate processes and controls for reporting similar data. Further, implementing new reporting requirements for a single proposal requires not only systems builds but also a number of internal processes and controls to ensure firms follow proper change management protocols. Thus, implementation of two separate reporting proposals for the same or similar data populations would prove even more challenging for firms.

For these reasons, we therefore recommend that the agencies better align the proposed Call Report and FR 2900 reporting in order to avoid unnecessary burden, consistent with the recommendations previously made in our letter responding to the Regulation D IFR.[8]

II. A depositor's eligibility to hold a NOW account should not be included in the criteria assessment to determine the reporting of savings deposits for which the six-transfer limit has been removed.

The Proposal would remove a reporting option implemented by the emergency approvals that "could result in the collection of ambiguous data" and as a result, the instructions to the Call Reports would now require firms to report savings deposits for which the six-transfer limit has been removed as transaction accounts based on an assessment of certain criteria. Where the reporting institution has suspended the enforcement of the six-transfer limit rule on an account that otherwise meets the definition of a savings deposit, the firm must report such deposits as a "transaction account" if "the reporting institution retains the reservation of right to require at least seven days' written notice before an intended withdrawal and the depositor is ***eligible*** to hold a NOW account."[9] If all other assessment criteria are met, even if a firm does not offer NOW accounts, they would be required to report savings deposits as NOW accounts, ATS accounts, or telephone and preauthorized transfer accounts (and as transaction accounts) based on a depositor's eligibility to hold such account. Reporting based on depositor type and eligibility would have a number of implications. Specifically, the requirement would produce data that would not accurately represent the manner in which the accounts transact. For example, while NOW accounts may allow for checks, debit card purchases, online bill pay or overdrafts, not all savings deposits products held by eligible NOW account depositors would allow for these features. This reporting treatment also would not be entirely consistent with the Regulation D definition of savings deposits, as NOW account eligibility is not a component of the definition.[10] Furthermore, this change in reporting of certain savings deposits could also create a significant shift in the balances that firms report on Schedule RC-E, leading to variances in reporting from prior quarters, thus eliminating

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8 *See* the Bank Policy Institute and Consumer Bankers Association Letter re: Regulation D Reserve Requirements of Depository Institutions (June 29, 2020).

9 85 Fed Reg 44361 at 44370 (emphasis added).

10 *See* 12 CFR 204.2.

comparability. Additionally, for firms that do not offer NOW accounts, the data necessary to determine a depositor's eligibility for NOW accounts would not be readily available. Obtaining this data for such firms would involve substantial business and system changes to flag such depositors and separate them from other savings account holders solely for the purposes of reporting. We therefore recommend that a depositor's eligibility to hold a NOW account not be included in the criteria assessment to determine the reporting of savings deposits for which the numeric limits on transfers and withdrawals have been removed.

III. Further clarification from the agencies is needed regarding the reporting of retail sweeps arrangements on the Call Reports.

The Proposal and proposed instructions to the Call Reports do not offer any additional guidance on the reporting of retail sweep arrangements in light of the Federal Reserve's elimination of reserve requirements on transaction accounts, other than the elimination of language related to the six transfer limits. In a retail sweep arrangement, firms transfer funds between a customer's transaction account(s) and that same customer's nontransaction account(s), which the instructions to the Call Reports state are "usually savings deposit account(s)," by way of preauthorized transfers, typically in order to reduce transaction account reserve requirements.[11] Further, the instructions together with the retail sweeps section of the relevant Glossary entry provide that if certain criteria are met for retail sweep programs, an institution must report the transaction account and nontransaction account (or savings deposit account) components separately. However, as a result of the proposed revisions that would ultimately require firms to report savings deposits as transaction accounts if the reporting institution has suspended the numeric limits on transfers and withdrawals and meets certain criteria including that the depositor is eligible to hold a NOW account, it is unclear how firms should treat the nontransaction or savings deposit components of a retail sweep arrangement. That is, should firms continue to report these nontransaction components or savings deposits as nontransaction accounts or should firms strictly follow the proposed assessment criteria for the treatment of accounts where the transfer limit has been removed. We therefore recommend that the agencies clarify how firms should report the components of retail sweeps arrangements in the Call Reports.

IV. The proposed changes in the reporting of savings deposits as NOW accounts and transaction accounts should not require such accounts to be subject to Regulation CC.

The Federal Reserve's FAQs on savings deposits from May 2020, state that "[b]ecause Regulation CC continues to exclude accounts described in 12 CFR 204.2(d)(2) from the Reg CC 'account' definition, the recent amendments to Regulation D did not result in savings deposits or accounts described in 12 CFR 204.2(d)(2) now being covered by Regulation CC."[12] However, given the proposed Call Report revisions, where certain savings deposits for which the six-transfer limit has been removed are to be reported as transaction accounts based on the proposed assessment criteria, it is unclear if such accounts, would thus be subject to Regulation CC solely as a result of their reporting. Despite the fact that certain savings deposits must be reported as transaction accounts in Schedule RC-E of the Call

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[11] *See* Federal Financial Institutions Examination Council, Draft Revisions to the Call Report Instructions for Proposed Revisions to the FFIEC 031 and FFIEC 041 Call Reports with Effective Dates Beginning with the March 31, 2020, Report Date *available at* https://www.ffiec.gov/pdf/FFIEC_Forms/FFIEC031_FFIEC041_20200807_i_draft.pdf.

[12] Board of Governors of the Federal Reserve System, Savings Deposits Frequently Ask Questions, FAQ 13, *available at* federalreserve.gov/supervisionreg/savings-deposits-frequently-asked-questions.htm.

Reports, the underlying nature of the accounts have not necessarily changed and thus should not be subject to Regulation CC, as in doing so there would be substantial implications for firms. Deposit accounts subject to Regulation CC require, among other things, expedited availability of funds, with certain deposits requiring availability of funds on the first business day following the banking day of deposit.[13] Applying Regulation CC to savings deposits, that are merely reported as transaction accounts on the Call Report, would require firms to expedite the availability of funds for these accounts and to in turn revise availability disclosures. We do not believe that the proposed reporting revisions were intended to make such accounts subject to Regulation CC and we therefore request that the Federal Reserve confirm that the referenced FAQ is still applicable and that those accounts that are defined as savings deposits would not be subject to Regulation CC regardless of their reporting treatment.

V. All firms, not just those who have adopted Topic 326, should be permitted to report provisions for expected credit losses on off-balance-sheet credit exposures as part of the total amount of institutions' provisions for credit losses in Schedule RI of the Call Reports.

The proposed Call Report instructions would direct institutions that have adopted Accounting Standards Update No. 2016-13, Topic 326, Financial Instruments—Credit Losses (Topic 326) to report provisions for expected credit losses on off-balance-sheet credit exposures as part of the total amount of institutions' provisions for credit losses (PCL) in Schedule RI, item 4. Additionally, they would add a new Memorandum item 7, ''Provisions for credit losses on off-balance-sheet credit exposures,'' to Schedule RI–B, Part II, Changes in Allowances for Credit Losses, to identify the portion of the overall amount of the PCL reported in Schedule RI, item 4, attributable to the provisions for expected credit losses on off-balance-sheet credit exposures. While we are supportive of the proposed revision, we recommend that this change be implemented for all institutions and not just for those that have adopted Topic 326. Currently, U.S. GAAP does not specify that changes in credit losses must be reported with other noninterest expense; in fact, many banks have reported provisions for expected credit losses on off-balance-sheet credit exposures with PCL for SEC reporting for many years. Implementing this revision for all institutions will ensure that comparisons of PCL and allowances are valid notwithstanding the different accounting standards, while also better aligning SEC reporting with regulatory reporting. Given that the reporting of changes in the off-balance-sheet liability with PCL is appropriate and accepted under U.S. GAAP, it is burdensome for firms to maintain two sets of instructions for reporting depending on the timing of Topic 326 implementation.

VI. The signature requirements for the Call Reports should be modernized to allow firms to use electronic signatures.

While the Call Report data submission occurs electronically, the reports require the signature of the bank chief financial officer (or equivalent officer), as well as three directors, to attest to the correctness of the report by "wet" signature (i.e., signing a document by hand using a pen). As part of the Call Report Supplemental Instructions: June 2020 Call Report Materials the agencies stated that they are permitting firms to use electronic signatures in lieu of ink signatures to fulfill the Call Report attestation requirement for the duration of the COVID-19 disruptions, provided the institution follows the appropriate governance procedures for collecting and retaining electronic signatures.[14] This

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[13] *See* 12 CFR 229.

[14] *See* Federal Financial Institutions Examination Council, Call Report Supplemental Instructions: June 2020 Call Report Materials, *available at* ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202006.pdf.

accommodation was a welcome change and has been helpful to firms in submitting the Call Report in a timely manner amid the COVID-19 pandemic. We further encourage the agencies to continue to allow the use of electronic signatures consistent with the accommodation described in the supplemental instructions beyond the duration of these disruptions.[15] Electronic and "wet" signatures are generally legally equivalent, and we are not aware of a statutory requirement or compelling policy justification for only permitting "wet" signatures on Call Reports. As remote work may remain more prevalent, a modernized signature requirement that permits electronic signatures would help reduce the regulatory burden associated with obtaining four physical signatures and would be consistent with the electronic submission of the Call Reports.

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The Bank Policy Institute appreciates the opportunity to comment on the proposal. If you have any questions, please contact the undersigned by phone at 646-736-3943 or by email at Alix.Roberts@bpi.com.

Respectfully submitted,

[redacted]

Alix Roberts
Assistant Vice President, Regulatory Affairs
Bank Policy Institute

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

Maryann Kennedy
Jonathan Gould
Office of the Comptroller of the Currency

Doreen Eberley
Nicholas Podsiadly
Federal Deposit Insurance Corporation

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15 The agencies should review "wet" signature requirements more broadly and should in turn consider allowing the use of electronic signatures across all regulatory reports.