February 26, 2024

Office of the Comptroller of the Currency
Chief Counsel's Office
Attn: 1557–0081 Call Report and FFIEC 002 Revisions
400 7th Street SW
Suite 3E–218
Washington, DC 20219

Manuel E. Cabeza, Counsel
Room MB–3128
Attn: Comments–Call Report and FFIEC 002 Revisions
Federal Deposit Insurance Corporation
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Washington, DC 20429

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
Attn: Call Report and FFIEC 002 Revisions
20th Street and Constitution Avenue NW
Washington, DC 20551

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

Re: Proposed Agency Information Collection Activities Comment Request; OCC 1557–0081; Document Number 2023-28473; 88 FR 89489 (Dec. 27, 2023)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the proposed requirements ("Proposal") for banks' regulatory reports, including Consolidated Reports of Condition and Income ("Call Reports") and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks ("FFIEC 002"). The Proposal has been issued by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Fed"), and the Federal Deposit Insurance Corporation ("FDIC) (collectively "Agencies"). Our comments specifically relate to the collection of new data on bank loans to nondepository financial institutions ("nonbanks").[2]

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

[2] Proposed Agency Information Collection Activities Comment Request; OCC 1557–0081; Document Number 2023-28473; 88 FED. REG. 89489 (Dec. 27, 2023), https://www.federalregister.gov/documents/2023/12/27/2023-28473/proposed-agency-information-collection-activities-comment-request.

Currently, there is far too little information collected and made available to regulators and the public about banks' lending to nonbanks. Collecting and disseminating additional data is needed for three main reasons:

1. the current definition of nonbanks is broad and includes a heterogeneous set of entities;

2. lending to nonbanks has grown substantially; and

3. this lending—and therefore the risk—is concentrated among some of the largest and most systemically important banks.

For these reasons, we fully support the Proposal and urge the Agencies to implement the new data collection as soon as practicable. More granular data will enable the Agencies—and the public—to better understand banks' exposure to nonbank lending and its associated risks. As a result, the Agencies can work to properly regulate these exposures and protect our financial system and the American people. Furthermore, the additional data collection adds value without adding significant cost or compliance burden for the banks because it is largely adjusting the current reporting of aggregates to more granular subtotals.

We also believe that the Proposal could be strengthened in three ways that are discussed further below:

1. Expand the reporting on unused commitments and delinquency to match the five categories for outstanding loans to nonbank borrowers.

2. Ensure that loan category definitions are clear, comprehensive, and incorporate all types of nonbanks.

3. Maintain regulatory awareness of outsized nonbank lending concentrations among banks with total assets below $10 billion.

BACKGROUND

Nonbanks are defined by the Financial Stability Board ("FSB") as financial companies *that are not* central banks, banks, or public financial institutions.[3] The term includes a wide range of entities such as insurance companies, mortgage companies, private equity funds, hedge funds, broker-dealers, and many more. Even with a slight decline in 2022, the FSB estimated that nonbanks collectively have more than $200 trillion in total assets and account for about half of global financing activities (see Chart 1).[4]

3 FINANCIAL STABILITY BOARD, GLOBAL MONITORING REPORT ON NON-BANK FINANCIAL INTERMEDIATION 3 (Dec. 18, 2023), https://www fsb.org/2023/12/global-monitoring-report-on-non-bank-financial-intermediation-2023/.

4 *Id.* at 7.

Chart 1

Total global financial assets[1]

Share of total financial assets USD trillion

Lhs: NBFI sector[2] Rhs: NBFI sector, Banks[3], Central banks, Public financial institutions

[1] Includes data for Russia up until 2020. [2] Nonbank financial intermediation (NBFI) includes insurance corporations, pension funds, other financial intermediaries, and financial auxiliaries. [3] All deposit-taking corporations.

Banks—mainly the global systemically important banks ("GSIBs")—lend to nonbanks to finance and facilitate their operations. Since 2010—when lending to nonbanks was first reported on the Call Reports—lending to nonbanks has increased dramatically. In fact, growth in this category has outpaced all other major loan categories in recent years.[5] In 2010, US banks reported $56 billion of loans to nonbanks, less than 1% of total loans.[6] By 2023, total loans to nonbanks had increased more than tenfold to $786 billion and accounted for more than 6% of total loans.[7] More recently, the Federal Reserve reported that lending to nonbanks exceeded $1 trillion at the end of January 2024.[8] Indeed, as the Financial Times recently reported, "[t]hat amount is up 12 per cent in the past year, making it one of banking's fastest-growing businesses when overall loan growth has been sluggish, up just 2 per cent" (see Chart 2):[9]

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5 *See, e.g.*, FEDERAL DEPOSIT INSURANCE CORPORATION, RISK REVIEW 51 (2023), https://www.fdic.gov/analysis/risk-review/2023-risk-review/2023-risk-review-full.pdf.

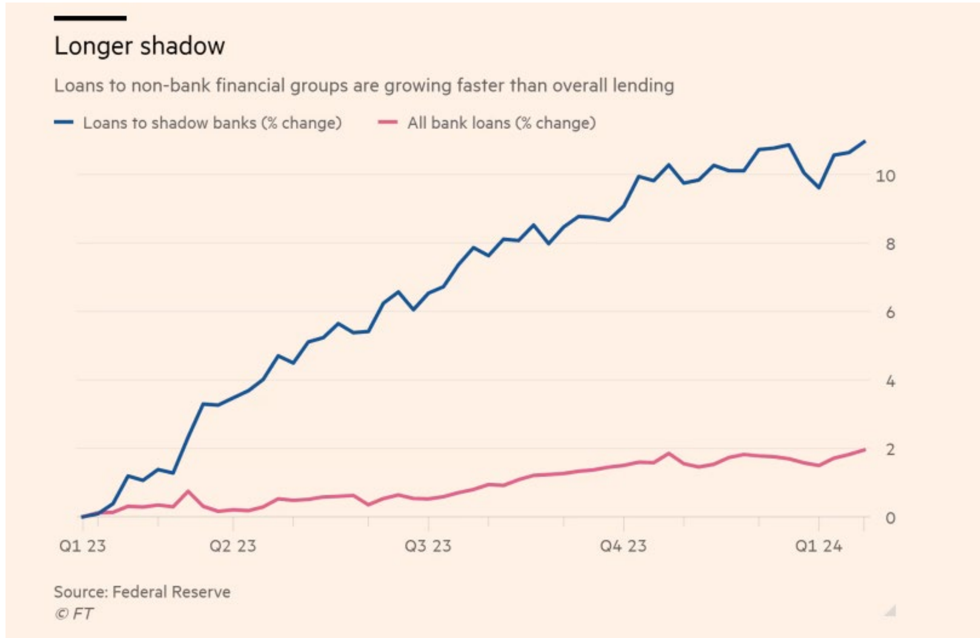
6 Proposed Agency Information Collection Activities Comment Request, *supra* note 2, at 89491.

7 *Id.*

8 *See, e.g.*, Stephen Gandel, *US Lenders' Debt To Shadow Banks Passes $1tn*, FIN. TIMES (Feb. 10, 2024), https://www.ft.com/content/aaf74ab1-0dc0-4965-92d5-87aacaa8fc30.

9 *Id.*

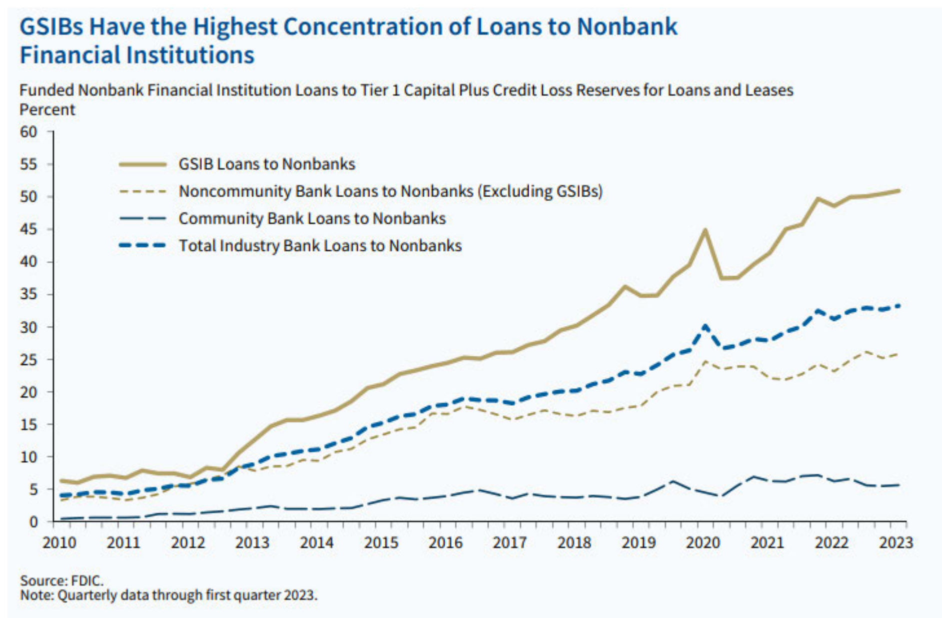
Chart 2



Lending to nonbanks is concentrated among the largest and most systemically important banks. In 2023, nonbank lending exceeded 50% of US GSIB's Tier I capital, up from around 5% in 2010 (see the solid gold line in Chart 3).[10] Lending to nonbanks has also increased substantially among other large banks that are not GSIBs (as indicated by the dashed gold line in Chart 3) but has stayed relatively low and stable among community banks (as indicated by the lowest dashed line in Chart 3).

10 FEDERAL DEPOSIT INSURANCE CORPORATION, *supra* note 5.

Chart 3



While nonbanks have grown to be sizable players in the global financial ecosystem, they have also proven to be risky and volatile while also being opaque. For instance, the unprecedented amount of emergency lending and financial support by the Federal Reserve and the U.S. Treasury extended to nonbanks—money market mutual funds, broker-dealers, the commercial paper market, and many more—in the aftermath of the COVID-19 pandemic proved how quick and severe dislocations in the nonbank landscape can be. It also demonstrated the threat that these entities can pose to financial and economic stability.[11] Indeed, the enormous support provided to nonbanks clearly reflected policymakers' judgment that these entities were systematically significant and the expenditure of significant public resources was necessary and appropriate to protect the banking system and economy more broadly from the consequences of a nonbank collapse.

Like any exposure within banks' lending portfolio, the inherent risk of nonbanks will ***transfer back to the banks***, ultimately endangering financial stability, if nonbanks end up in distress, face liquidity crises, fail, or become unable to repay loans. Researchers from the Bank for International Settlements ("BIS") summarize:

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11 *See, e.g.*, Dennis Kelleher & Phillip Basil, *The Increasing Dangers of the Unregulated "Shadow Banking" Financial Sector,* Better Markets (Mar. 24, 2022), https://bettermarkets.org/wp-content/uploads/2022/03/BetterMarkets_Report_Dangers_of_the_Shadow_Banking_System_March2022.pdf; Richard H. Clarida, Burcu Duygan-Bump & Chiara Scotti, *The COVID-19 Crisis and the Federal Reserve's Policy Response*, Board of Governors of the Federal Reserve System, 2021-035 FIN. AND ECON. DISCUSSION SERIES (2021), https://www.federalreserve.gov/econres/feds/files/2021035pap.pdf; Eric Milstein & David Wessel, *What Did the Fed Do In Response to the COVID-19 Crisis?*, BROOKINGS INST. (Jan. 2, 2024), https://www.brookings.edu/articles/fed-response-to-covid19/.

> [L]iquidity provision by non-banks tends to be ***more opportunistic and more prone to evaporate at times of stress, with entities that generally provide liquidity suddenly turning into liquidity consumers***. . . .
>
> These structural shifts mean that liquidity imbalances have the potential to greatly affect prices and, in extreme cases, ***endanger financial stability***. The 'dash for cash' turmoil at the height of the Covid-19 crisis (when investors shifted away from risky assets to cash-like assets on a massive scale) painfully exposed such structural [nonbank] vulnerabilities and spillovers that affected other participants in the financial system. Ultimately, it was only central banks' flexible use of their balance sheets that arrested the adverse feedback loops and helped to restore market functioning.[12]

Put differently, without central bank intervention, numerous nonbanks would likely have collapsed, which would have at best stressed banks and at worst have caused a contagion of failures inevitably leading to crises, crashes, and even larger bailouts.

SUMMARY OF THE PROPOSAL

The Proposal would increase the granularity of the required bank reporting to provide Agencies and the public with a better understanding of three areas:

1. banks' direct nonbank loan exposures, broken down by different types of nonbanks;
2. off-balance sheet items that, if drawn, would further increase direct exposure; and
3. the performance and health of nonbank loans.

The changes would be implemented beginning with the June 30, 2024, regulatory reports[13] and be required for all banks with $10 billion or more in total assets.[14]

Direct Nonbank Loan Exposure

The current reporting format of aggregate totals for nonbank loans would expand to five subcategories, which group together loans to nonbanks with similar business models:

- Loans to mortgage credit intermediaries;
- Loans to business credit intermediaries;

[12] Sirio Aramonte, Andreas Schrimpf & Hyun Song Shin, *Non-Bank Financial Intermediaries and Financial Stability*, Bank for International Settlements Working Papers, No. 972, at 2-3 (Oct. 29, 2021), https://www.bis.org/publ/work972.htm.

[13] Proposed Agency Information Collection Activities Comment Request, *supra* note 2, at 89489.

[14] *Id*. at 89492.

- Loans to private equity funds;
- Loans to consumer credit intermediaries; and
- Other loans to nondepository financial institutions.[15]

Off-Balance Sheet Items

Unused commitments represent potential additions of credit extension to borrowers. These are not outstanding loans at the time of reporting. However, borrowers can choose to draw on the lines of credit, which would add to the outstanding loan amounts. The Proposal would add reporting of unused commitments for loans to nondepository financial institutions as an aggregate total.[16]

Performance Metrics

The Proposal would also add reporting for nonbank loans at the three standard levels of delinquency severity, consistent with reporting for other loan types:

- 30-89 days past due, and still accruing interest;
- 90 days or more past due, and still accruing interest; and
- Nonaccrual.[17]

SUMMARY OF COMMENTS

We strongly support the addition of increased reporting on nonbank lending for several reasons, as detailed earlier. Rapid growth, the resulting lending concentrations (especially among GSIBs), and the inherent risk and volatility of the nonbank sector and its potentially substantial negative impact on the broader financial system and economy all point to the need for more granular bank reporting. The enhanced transparency required under the Proposal will improve the ability of regulators and the public to identify and address, as necessary, the accumulation of dangerous concentrations of risk in banks' portfolio of loans to nonbanks.

We also recommend several changes to strengthen the reporting requirements and position the resulting data to be as useful as possible, for supervisory efforts at the Agencies as well as by the public:

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15 *Id.*

16 *Id.*

17 *Id.*

- Expand the reporting on unused commitments and delinquency to match the five categories for outstanding loans to nonbank borrowers. One of the biggest current impediments to understanding the risk of nonbank lending is the lack of transparency resulting from loans to nonbank borrowers being reported as one aggregate total. We recommend making the changes to increase granularity to avoid this becoming a problem for understanding unused commitments and delinquency trends in the future.

- Ensure that loan category definitions are clear, comprehensive, and incorporate all types of nonbanks identified by the BIS, FSB, and other authorities. The Proposal does not contain any details beyond the five loan category titles to explain how nonbank entities fit within the five proposed loan categories. The Agencies must ensure that definitions and categorization instructions are clear for banks that will be reporting as well as Agency staff, analysts, and any other members of the public that will be interpreting and using the data.

- Maintain regulatory awareness of outsized nonbank lending concentrations among banks with total assets below $10 billion. We support the Proposal's requirement that banks with $10 billion or more in total assets would be required to report more granular data on nonbank lending and banks with total assets below $10 billion would not. The data show that the largest banks conduct the majority of lending to nonbanks, so this framework will capture the majority of the risk in the nonbank sector that could transfer to banks. However, given the risk and volatility in the nonbank sector, financial regulators must also remain aware of any banks below this size threshold that develop material concentrations in nonbank lending. Smaller banks typically have less experience and expertise, and therefore may be less able to manage the risk of nonbank lending.

COMMENTS

I. EXPAND THE REPORTING ON UNUSED COMMITMENTS AND DELINQUENCY TO MATCH THE FIVE CATEGORIES FOR OUTSTANDING LOANS TO NONBANK BORROWERS.

One of the biggest current impediments to understanding the risk in nonbank lending is the lack of transparency resulting from the existing requirement that loans to nonbank borrowers be reported as one aggregate total. The proposed addition of five categories of nonbank direct lending is a significant improvement from this current reporting framework. We recommend employing the same structure for the reporting of unused commitments and delinquency, to avoid problems associated with a lack of transparency. Indeed, not using the same categories as the outstanding nonbank loans makes no sense, serves no practical purpose other than to obscure meaningful information, and could lead to unwarranted concerns if aggregate data were to be misinterpreted.

Furthermore, since banks will be reporting the five types of nonbank loans, extending that

framework to unused commitments and delinquency should not add significant cost. Each loan would already be identified as fitting into one of the five categories so any unused commitments or delinquency could be easily classified into the same categories.

This additional reporting could bring added benefits to the Agencies and the public in tandem with the recently reinstated authority for the Financial Stability Oversight Council ("FSOC") to require supervision and regulation of systemically important nonbanks.[18] Better Markets has urged the FSOC to resume its work in this area immediately.[19] Once the FSOC restarts this work, it will be critical to fully understand all facets of banks' exposures to systemically important nonbanks, which is not possible with the current reporting framework. For example, lending to nonbanks that provide mortgage credit or servicing, which is an area that the FSOC is evaluating in relation to US financial stability,[20] is currently grouped together with lending to all other types of nonbanks. The Proposal would require banks to distinguish and report this type of lending, which would in turn provide critical insight on which banks are most exposed to a systemically important activity.

II. ENSURE THAT LOAN CATEGORY DEFINITIONS ARE CLEAR, COMPREHENSIVE, AND INCORPORATE ALL TYPES OF NONBANKS IDENTIFIED BY THE BIS, FSB, AND OTHER AUTHORITIES.

As policymakers, regulators, academics, and the public have attempted to understand and measure the nonbank sector, multiple definitions and taxonomies for nonbanks have emerged.[21] The Federal Financial Institutions Examination Council ("FFIEC") has also developed a framework to classify the types of loans that are made to nonbanks and directs banks to use this framework for Call Report filings. This list includes:

1. Loans (other than those that meet the definition of a "loan secured by real estate") to real estate investment trusts and to mortgage companies that specialize in mortgage loan originations and warehousing or in mortgage loan servicing;
2. Loans to holding companies of other depository institutions;
3. Loans to insurance companies;

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[18] *See* Press Release, U.S. Department of the Treasury, *FSOC Approves Analytic Framework for Financial Stability Risks and Guidance on Nonbank Financial Company Determinations* (Nov. 3, 2023), https://home.treasury.gov/news/press-releases/jy1876.

[19] *See* Press Release, Better Markets, *We Applaud the FSOC's Decision to Reinstate Authority to End Systemic Threats from Nonbanks; Now It Must Act to Actually End Them* (Nov. 3, 2023), https://bettermarkets.org/newsroom/we-applaud-the-fsocs-decision-to-reinstate-authority-to-end-systemic-threats-from-nonbanks-now-it-must-act-to-actually-end-them/.

[20] FINANCIAL STABILITY OVERSIGHT COUNCIL, ANNUAL REPORT 15 (2023), https://home.treasury.gov/system/files/261/FSOC2023AnnualReport.pdf.

[21] *See, e.g.*, FINANCIAL STABILITY BOARD, *supra* note 3, at 3; Aramonte, Schrimpf & Shin, *supra* note 12, at 2.

4. Loans to finance companies, mortgage finance companies, factors and other financial intermediaries, short-term business credit institutions that extend credit to finance inventories or carry accounts receivable, and institutions whose functions are predominantly to finance personal expenditures;
5. Loans to federally-sponsored lending agencies;
6. Loans to investment banks;
7. Loans and advances made to the bank's own trust department;
8. Loans to other domestic and foreign financial intermediaries whose functions are predominantly the extending of credit for business purposes, such as investment companies that hold stock of operating companies for management or development purposes; and
9. Loans to Small Business Investment Companies.[22]

The Proposal does not contain any details for loan classification, beyond the five loan category titles listed earlier.[23] That is insufficient.

The Agencies must ensure that loan definitions and categorization instructions are clear, both for the banks that will be reporting the data as well as for Agency staff, analysts, and members of the public that will be interpreting and using the data. The Agencies or the FFIEC must develop a standard, uniform, and comprehensive set of categories that includes all types of nonbank lending. Agencies should also consult other definitions of nonbank lending—such as those from the BIS, FSB, and other authorities—to ensure that the definitions and categories are inclusive, comparable, and translatable. Lots of different, non-standardized categories will only lead to confusion, if not anarchy, as well as policy paralysis.

Furthermore, the Agencies must ensure that the proposed reporting changes and capture of bank exposures to the nonbank sector are comprehensive. For example, there may be exposures such as counterparty credit risk stemming from derivatives contracts or other provisions of liquidity to nonbanks that fall outside of the proposed direct loan reporting framework. Now is the time to identify such gaps to make sure that these new reporting requirements do not create incentives for banks to exploit loopholes or other ways to avoid transparent and complete reporting.

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22 Federal Financial Institutions Examination Council, *Instructions for Preparation of Consolidated Reports of Condition and Income* at RC-C-17 – RC-C-18 (Sept. 2023), https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202309_i.pdf.

23 Proposed Agency Information Collection Activities Comment Request, *supra* note 2, at 89492.

III. MAINTAIN REGULATORY AWARENESS OF OUTSIZED NONBANK LENDING CONCENTRATIONS AMONG BANKS WITH TOTAL ASSETS BELOW $10 BILLION.

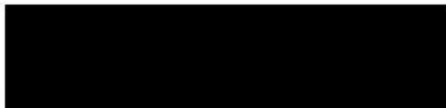
As explained earlier, nonbanks are a large, risky, and volatile segment of the financial system. Bank lending to nonbanks exposes the banks to this risk and volatility. The purpose of collecting additional data is to understand this exposure and limit or contain the resulting financial vulnerabilities.

As shown in Chart 3, the largest banks have the most exposure to nonbank lending. Therefore, we support the Proposal's requirement that banks with $10 billion or more in total assets would be required to report more granular data on nonbank lending and banks with total assets below $10 billion would not. However, given the risk and volatility in the nonbank sector, financial regulators must also remain aware of any banks below this size threshold that develop material concentrations in nonbank lending. Smaller banks typically have less experience and expertise, so additional regulatory attention is required to ensure these banks appropriately manage the risks they take on.

CONCLUSION

We hope these comments are helpful as the Agencies move expeditiously to finalize the Proposal.

Sincerely,



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