

# **NYLEX Benefits**

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October 25, 2005

Steven F. Hanft  
Paperwork Clearance Officer  
Room MB-3064  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429

**Attention: Consolidated Reports of Condition and Income, 3064-0052**

Dear Mr. Hanft:

NYLEX Benefits, LLC, wishes to comment on proposed changes to the Consolidated Reports of Condition and Income (Call Report). This letter is submitted in response to the request for public comment issued by the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Office of the Comptroller of the Currency (collectively, the "Agencies") regarding proposed revisions to the Consolidated Reports of Condition and Income (Call Report), published in the *Federal Register*, Vol. 70, No. 162, Tuesday, August 23, 2005, pages 49363-49372.

NYLEX Benefits is a nationally recognized executive benefits consulting firm specializing in design and implementation of Bank-Owned Life Insurance (BOLI) programs for a wide range of Banks throughout the US. As such, we extensively use the data base of Call Reports (including Statistics on Depository Institutions) for numerous Bank clients.

**Background**

In December 2004, the Federal Banking Regulators published updated guidance on purchases of Bank Owned Life Insurance (BOLI). Issued as OCC 2004-56, FIL 127-2004, FRB SR 04-19, and OTS TB-84, the guidance in part states:

**RISK MANAGEMENT OF BOLI:** *Risk assessment and risk management are vital components of an effective BOLI program. In addition to conducting a risk assessment as part of a thorough pre-purchase analysis, monitoring BOLI risks on an ongoing basis is important, especially for an institution whose aggregate BOLI holdings represent a capital concentration. Management of an institution should review the performance of the institution’s insurance assets with its board of directors at least annually. More frequent reviews are appropriate if there are significant anticipated changes to the BOLI program such as additional purchases, a decline in the financial condition of the insurance carrier(s), anticipated policy surrenders, or changes in tax laws or interpretations that could have an impact on the performance of BOLI. This risk management review should include, but not necessarily be limited to:*  
{ . . . }

**Peer analysis of BOLI holdings.** *To address reputation risk, an institution should compare its BOLI holdings relative to capital to the holdings of its peers to assess whether it is an outlier.*

However, the Regulators have not given Banks the tools necessary to make a valid assessment of “outlier” status. The primary resource available to Banks to make such an assessment is the Call Report. Yet, the BOLI information on the Call Report is not consistently or completely reported, making it impossible for any to make a reasonable determination of whether it is an “outlier”.

### **The Call Report Does Not Consistently Report BOLI Holdings**

In the Call Reports filed by Banks for the period ending June 30, 2005, approximately 3,400 Banks reported as having life insurance assets on line 5.b (RCON 009) of Call Report Schedule RC-F (Other Assets), representing a little over \$68.1 billion. That line is titled “Cash surrender value of life insurance”.

An additional 264 Banks reported \$2.2 billion in assets on lines 5.f (TEXT 3549), 5.g (TEXT 3550), and 5.h (TEXT 3551) that may possibly also be characterized as life insurance. These lines permit free form text to be entered, and the information contained on these lines variously included the following examples:

- BOLI
- Bank-Owned Life Insurance
- Bank’s Own Life Insurance
- Life Insurance
- SERP Insurance
- Single Premium Life Insurance
- Non-qualified Pension Plan
- Deferred Compensation Cash Values
- Rabbi Trust

In many instances, it seems clear that the asset information included on lines 5.f, 5.g, and 5.h may be identified as life insurance cash surrender values. However, in other cases (such as the last three examples above), it is not clear what asset is being reported or what valuation method has been used. A Rabbi Trust is a vehicle commonly used to hold assets of a non-qualified retirement programs. However, the assets held by the Rabbi Trust could include life insurance, mutual funds, annuities, etc.

### **BOLI is Significantly Underreported on the Call Report**

A careful examination of the Call Reports shows that a number of Banks do not report any holdings of BOLI, even though these Banks clearly own life insurance policies with cash surrender values. This underreporting is determined from a number of public and proprietary sources. For example, a review of the Form 10-K and Annual Reports of several Banks show extensive discussions of BOLI holdings. Yet the same Banks' Call Reports show no life insurance information on Schedule RC-F.

In other instances, Banks may report considerable amounts of BOLI in one reporting period, but not report BOLI in subsequent periods. It is evident, using proprietary sources, that these Banks have not surrendered or otherwise terminated their life insurance programs – they merely stopped reporting the information on Schedule RC-F.

In a few instances, Banks reported apparent reductions in life insurance cash surrender values from one reporting period to the next on Schedule RC-F, while reporting substantial increases in earnings from cash surrender values, reported on Scheduled RI-E (Explanations) at line 1.b (RIAD C014). Such a result would be unusual, at best.

The reasons for this underreporting are varied. Some amounts may not pass the reporting threshold of 25% of “all other assets” (from Line 5 of Schedule RC-F [RCON 2168]). In other cases, the Banks may have a unique definition of their life insurance holdings that would cause them to not report the holdings on Schedule RC-F.

The value of the underreporting cannot be determined. However, it could well exceed 10% of the total BOLI that is reported in the United States, or over \$7 billion, representing a considerable discrepancy.

### **BOLI Data Cannot be Systematically Reviewed**

The FDIC provides a data base research tool at its web site commonly referred to as SDI or Statistics on Depository Institutions. In its simplest form, SDI allows a user to search the entire data base of Call Reports and download a wide range of information in a comma delimited file format. However, no information related to BOLI is available in the SDI data base, and a user must manually cull the Call Report for each bank to determine information related to BOLI. It appears that the exclusion of BOLI data from SDI is directly related to the inconsistencies and underreporting of BOLI. Once the Call Report system is “fixed”, it is imperative that SDI be modified to permit analysis on BOLI.

**Conclusion**

While the Federal Banking Regulators have placed requirements on Banks considering the purchase of BOLI to compare their BOLI holdings with that of peer Banks to determine whether they are an “outlier”, the Regulators have not provided the Banks with sufficient tools to make the determination. Information reported as cash surrender value of life insurance is inconsistently reported

**Recommendations**

It is recommended that the Call Report be revised to obligate all Banks to report the value of their life insurance holdings without regard to amount (no minimum reporting threshold).. We commend the suggested change to Schedule RC-F. The definition of life insurance for reporting purposes should be clear that it applies to every instance of permanent cash value life insurance policies owned by each bank, for whatever reason, including all forms of cash value life insurance (whole life, universal life, variable universal life, private placement life insurance), or whether the assets are held in an insurance carrier’s general account or separate accounts; all Modified Endowment Contracts (MECs) should be reported as life insurance. This would also include life insurance policies owned by the Bank or a Grantor (Rabbi) Trust. The purposes of the life insurance should have no bearing on its being reported, including deferred compensation programs, key man coverage, supplemental retirement or pension plans, directors deferral programs, etc.) Information on term life insurance owned by Banks would not be included, since term life insurance has no cash value. The Call Report instructions could refer to the definition of life insurance in Section 7702 of the Internal Revenue Code.

Thank you for the opportunity to comment on the proposed changes to the Call Report. Please contact the undersigned at 203-353-5800 should you have any questions on this submission.

Sincerely,

*Jay F. Lubin*