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June 28, 2004

Information Collection Comments, Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: 1550-0023
VIA email: infocollection.comments@ots.treas.gov

RE: Proposed Revisions to Instructions for the Thrift Financial Report

Ladies and Gentlemen:

We appreciate the opportunity to comment on the proposed revision to the Thrift Financial Report (TFR) as outlined in the Joint Notice and Request for Comment, OMB Number 1550-0023. We support the agencies' efforts to increase consistency in regulatory reporting of delinquent GNMA loans, U.S. Government insured foreclosed real estate, and "when-issued" securities. We believe the proposed revisions regarding "when-issued" securities are effective and appropriate; however, as further described below, we believe the proposals with respect to government insured delinquent loans and foreclosed real estate will result in information collection that is inconsistent and confusing to TFR users.

Delinquency Status of GNMA Loans Subject to Repurchase Options

The agencies' proposal to include U.S. Government insured loans in the Schedule PD/RC-N delinquent loan disclosures may lead to incorrect perceptions of loan portfolio performance by third party users of Schedule PD/RC-N data. Historically, government insured loans have been excluded from Schedule PD/RC-N, which we believe is appropriate because they generally present less risk to an institution than uninsured or privately insured loans. Although Schedule PD/RC-N has been revised to incorporate memorandum fields to report government insured loans, we believe many users will not incorporate those fields when making performance assessments. In addition, contractual provisions based on delinquency performance (such as debt covenants) often reference the Schedule PD/RC-N delinquency fields and the proposed change could substantially affect those provisions.

We acknowledge Statement No. 140 requires re-booking of certain delinquent loans subject to repurchase provisions. However, the institution is not required to repurchase those loans until after a foreclosed property has been conveyed to the government agency and insurance claim

proceeds have been received. Depending on the particular loan circumstances, repurchase may not happen for many years or even at all. For institutions with relatively large mortgage production and servicing activities, the government insured delinquent loans repurchased and subject to repurchase could far exceed the institution's investment loan portfolio delinquencies. Including government insured loans in the Schedule PD/RC-N delinquency data could mask trends in the institution's investment loan portfolio (for which the institution has more substantial risk from default) – trends we believe are more relevant to a user of Schedule PD/RC-N data than information about loans that are not required to be repurchased.

We also note a mortgage loan servicer has the same repurchase rights and obligations related to GNMA loans that it services but did not deliver into the GNMA securities (i.e., “purchased servicing”) as it does for those loans it did deliver. Because the institution is not required to re-book loans that it did not originally deliver, those loans would continue to be excluded from Schedule PD/RC-N; thus, the proposed instruction change would result in inconsistent Schedule PD/RC-N treatment for transactions that present the exact same risk to the institution. The generally accepted accounting principles (GAAP) inconsistency is because the scope of Statement No. 140 is limited to sales of financial assets; however, we do not believe the GAAP inconsistency should result in a Schedule PD/RC-N inconsistency since Schedule PD/RC-N is not intended to mirror GAAP requirements. In addition, we are concerned this reporting inconsistency might lead institutions to pursue transactions to trade “originated” servicing for “purchased” servicing, incurring unnecessary cost purely to avoid the inconsistent reporting.

As a result of the matters discussed above, we recommend the agencies retain the existing exception for government insured loans “in foreclosure status”. We recommend the agencies retain the memorandum reporting of government insured loans excluded from the Schedule PD delinquency data as a result of the exception.

We also believe it would be helpful for the agencies to further define “in foreclosure status”. We note the GNMA repurchase provisions allow repurchase of loans for which the first legal notice of intent to foreclose may not have occurred or for which foreclosure proceedings may not be advanced because of bankruptcy filings. In fact, for loans in GNMA pools formed prior to 2003, a loan only 30 days past due may be eligible for repurchase. As a result, an institution may have repurchased, or have the ability to repurchase, many loans that are not proceeding toward foreclosure but for which the institution intends to foreclose as soon as possible. We recommend these loans also be excluded from the Schedule PD/RC-N and note the OTS' Q&A No. 239 response is consistent with this recommendation.

Foreclosed Real Estate

We believe the agencies' proposal to include foreclosed real estate from government insured loans in Other Real Estate Owned on Schedule SC/RC will be confusing to third party users of the financial information, particularly with respect to institutions with a relatively large amount of mortgage servicing activities of government insured loans. The final transfer of foreclosed real estate from government insured loans, and related receipt of government insurance proceeds, poses substantially less financial risk than recovery of recorded value of repossessed real estate

from non-government insured loans. Grouping these two types of assets together will not accurately convey the risk an institution bears on those assets. Foreclosed real estate is required to initially be measured at fair value GAAP (and subsequently at the lower of cost or fair value). For real estate acquired through foreclosure on non-government insured loans, the financial statement carrying amount is an estimate by management. The estimate is generally based on many factors including property appraisal, but the ultimate realization of the financial statement carrying amount is uncertain until an actual sale of the property. For real estate acquired through foreclosure of government insured loans, the ultimate recovery of the financial statement carrying amount is known with certainty at the date of foreclosure – there is generally no market risk to the institution.

One alternative might be to include a separate line in Schedule SC/RC exclusively for foreclosed real estate from government insured loans. However, we believe the extremely low risk of these assets does not justify separate line item presentation and recommend the agencies allow Other Asset presentation.

“When-Issued” Securities

We support modifying the Call Report instructions for Schedule RC to be consistent with the TFR instructions for Schedule SC. In that regard, we believe “trade date accounting” is appropriate because it is consistent with GAAP.

We also note paragraph 7.92 of the 2004 edition of the AICPA’s Audit and Accounting Guide for Depository and Lending Institutions states “Regular-way purchases and sales of securities should be recorded on the trade date.” The 2004 AICPA Guide differs from the 2000 AICPA Guide by incorporating the “regular-way” limitation to trade date accounting from the AICPA’s SOP 01-06. The relevance of the “regular-way” limitation is that it aligns the 2004 AICPA Guide with Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities, as amended.

Under Statement No. 133, if a security purchase contract is to be settled in the “regular-way”, it is exempt from application of the derivative accounting required by Statement No. 133; if the contract is to be settled in other than the “regular-way”, and if the contract otherwise meets the definition of a derivative – which we believe most when-issued security trades do – the derivative accounting requirements of Statement No. 133 must be applied. To maintain consistency with GAAP, we recommend the proposed Call Report instruction modifications incorporate the GAAP “regular-way” concept for trade date accounting, rather than requiring trade date accounting for all securities.

If you have any questions regarding our comments, please contact me at 1300 S. Mopac, Austin, Texas 78746, Attn: Craig Gifford or by phone at (512) 434-2515.

Sincerely,

/s/ Craig Gifford

Controller, Guaranty Bank