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December 1, 2008 **Submitted Via E-Mail**

Information Collection Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

Re: Proposed Agency Information Collection Activities; Comment Request – Thrift Financial Report; 73 Federal Register 57205; October 1, 2008; TFR Revisions-2009, OMB No. 1550-0023

To Whom It May Concern:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the proposed changes to the Thrift Financial Report (TFR),[2] as issued by the Office of Thrift Supervision (OTS). The OTS's proposed changes to the TFR are numerous, significant, and include new items that focus on potential information needs, particularly in the areas of credit risk, liquidity, and liabilities, that are most critical and relevant to the OTS in fulfilling its supervisory responsibilities. The proposed changes would be phased in during 2009 to enhance the OTS's monitoring of the industry's condition, performance, and risk.

We note at the outset that these proposed changes come at a time when the resources of insured depository institutions already are stretched extraordinarily thin by regulatory burdens. The proposed changes, while providing the OTS with additional information that it believes is necessary to fulfill its supervisory responsibilities, will significantly add to the burden. We urge the OTS to adopt only those changes to the TFR that are essential to its mission.

Areas in which we believe revisions to the TFR could most benefit from changes are as follows:

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[1] *The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.6 trillion in assets and employ over two million men and women.*

[2] 73 *Fed. Reg*. 57205 (October 1, 2008).

- **Reciprocal Deposits**: The ABA recommends creating a separate line item for reciprocal deposits on the TFR Schedule DI – Consolidated Deposit Information, to separate them from broker-originated deposits. Reciprocal deposits are less risky than brokered deposits, and differentiating reciprocal deposits will allow the OTS to monitor this deposit funding source closely.

- **Sweep Accounts**: The ABA will make more detailed comments on the treatment of sweep accounts, including deposits swept into a depository institution from affiliated institutions, when it comments on the FDIC Notice of Proposed Rulemaking on FDIC Assessments.[3] However, at this time, we note that provisions of the TFR, especially Schedule DI, and the related Instructions and Glossary for completing the TFR, will need to be revised if the FDIC agrees that these deposits should be distinguished from more traditional brokered deposits.

- **Confidential Treatment**: The ABA recommends that the current confidential treatment for fiduciary income, expense, and loss data be retained. The ABA feels there are significant competitive concerns with the proposal to eliminate the current confidential treatment, and the needs of market participants can continue to be satisfied with a financial institution's audited financial statements.

  The ABA also recommends a bifurcated approach to the proposed elimination of the current confidential treatment of the data in Schedule HC – Thrift Holding Company. While the ABA feels eliminating the confidential treatment of the data in Schedule HC is appropriate for publicly-held thrift holding companies, we recommend that the confidential treatment of the data in Schedule HC not be eliminated for privately-held thrift holding companies. Disclosing this information would frustrate many of the reasons why these institutions have elected to remain privately held.

These points, as well as additional suggestions for improving the revisions to the TFR, are set forth below.

Discussion

Non-fiduciary Issues:

Maturity Distributions of Unsecured Other Borrowings and Subordinated Debt.

The OTS states that the TFR currently lacks information on remaining maturities of unsecured "other borrowings" and subordinated notes and debentures. Thus, the OTS proposes that thrifts would report on Schedule DI, new lines 645, 651, 655, and 660, separate maturity distributions for "other borrowings" that are unsecured and for subordinated notes and debentures. The OTS also proposes that the maturity distributions would include remaining maturities broken out for one year or less and over one year.

[3] 73 *Fed. Reg.* 61560 (October 16, 2008).

The ABA supports this proposed collection of information. It would enable the FDIC to implement an adjustment to the risk-based assessment system so that insured depository institutions with greater amounts of general unsecured long-term liabilities will be rewarded with a lower assessment rate. We believe this additional reporting would be reasonable and would not be unduly burdensome.

Eliminating Confidential Treatment of Schedule HC - Thrift Holding Company – Data.

The OTS requests comments on the continued confidential treatment of data filed by individual thrift holding companies on Schedule HC – Thrift Holding Company. The OTS presently does not publicly release Schedule HC data filed by holding companies. However, the OTS notes that many public requests are received for this data, and some rating agencies have indicated that thrift holding company debt ratings suffer due to the lack of publicly available information.

The ABA recommends that this issue be addressed in a bifurcated manner by the OTS. We recommend that (a) the proposed elimination of confidential treatment of Schedule HC data apply only to publicly-held thrift holding companies; and (b) the OTS retain the existing confidential treatment of Schedule HC data for privately-held thrift holding companies.

This would allow the public and rating agencies access to the information contained in Schedule HC for publicly-held thrift holding companies which would mutually benefit interested parties, including the OTS and other financial institutions. Retaining the confidential treatment of this data for privately-held thrift holding companies would retain the inherent benefits of these institutions in organizing themselves with a private structure, while at the same time still allowing the OTS access to the information reported on Schedule HC by these thrift holding companies in order for the OTS to assess the performance and risk of the institution and fulfill its supervisory responsibility.

Schedule VA – Consolidated Valuation Allowances and Related Data – Additional Line, VA 979, Credit Card Charge-Offs Related to Accrued Interest.

The OTS notes that, at the request of the FDIC to improve the deposit insurance premium assessment process, it proposes to add a new line, VA979, Credit Card Charge-Offs Related to Accrued Interest, to Schedule VA. This would capture data on the amount of credit card charge-offs that are due to accrued interest, as a separate line item from the current Schedule VA line item for charge-offs for credit cards. This additional line would take effect as of June 30, 2009.

Compliance with this new line item would be difficult for those thrift institutions (including those that use a third-party processor for servicing credit cards) that do not presently capture data on the amount of credit card charge-offs that are due to accrued interest. Since that specific charge-off data is not currently required to be reported on the TRF, the accrued interest is sometimes added to the credit card loan amount and is not tracked as a separate line item. Not all thrift institutions that offer credit cards to their customers have the proposed data readily available within the thrift institution or from their third-party processor to separately report the accrued interest portion of the charge-off.

The ABA urges the OTS to consult with third-party credit card processors prior to finalizing this rule to make sure that such entities can provide the new data on the amount of credit card charge-offs that are due to accrued interest . Additionally, we urge the OTS, in establishing an effective date if the proposed change is adopted, to keep in mind that some thrift institutions may be required to negotiate adjustments to existing contracts with third party credit card processors in order to comply with this new reporting requirement.

Instructions for Proposed New Items to Be Reported on the TFR.

The OTS proposes to add many new items to be reported on the TFR. As a general comment, the ABA recommends that the OTS provide clear instructions to accompany the new reporting items, as needed, to guide those institutions that are required to complete this report. This clarity will lessen the additional reporting burden on thrifts and will enhance the quality of the data provided to the OTS.

More specifically, the ABA recommends that the OTS provide clear instructions for completing the 16 new lines proposed to be added to Schedule LD - Loan Data - related to high loan-to-value loans secured by multifamily properties without private mortgage insurance (PMI) or government guarantees, which would take effect as of June 30, 2009. The OTS believes these new line items will provide useful additional detail on high loan-to-value loans secured by multifamily properties held by thrifts, including detail on delinquencies, nonaccruals, and net charge-offs, and data on such loans originated, purchased, or sold during the reporting period. The OTS plans to use this new data to better monitor the risk profiles of thrifts with concentrations of high loan-to-value multifamily mortgage loans. However, these data will be most useful if the OTS clearly states in the TFR instructions precisely what information a thrift is to report.

Schedule SI - Consolidated Supplemental Information - Proposed New Line SI395 – Pledged Securities.

The OTS proposes to add a new line SI395, Pledged Securities, to Schedule SI – Consolidated Supplemental Information, to provide additional detail on the amount of loans and securities pledged by thrifts as collateral for loans, to allow the OTS to better monitor risk profiles of thrifts that have concentrations of pledged loans and securities.

We recommend a technical conforming revision to the proposed new line SI395 line caption on page 57214, column 2, to reflect the caption of “Pledged Securities” instead of “Pledged Trading Assets.” This technical clarification is consistent with the intent of this provision, and other references to this line caption as “SI395, Pledged Securities” (e.g., item 51, page 57208, column 3).

In addition to the recommended changes noted above to the OTS’s NPR, we offer the following recommended revisions for additional changes to the TFR.

Reporting of reciprocal deposits on TFR Schedule DI.

The OTS proposes adding a new line DI230, Deposits Gathered through CDARS.

The ABA recommends that the TFR be amended to break out "reciprocal" deposits in a separate line item from broker-originated deposits that are currently reported on Schedule DI. A reciprocal deposit is obtained when an insured depository institution exchanges funds, dollar-for-dollar, with members of a network of other insured depository institutions, where each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members, and all funds placed through the network are fully insured by the FDIC. Such an arrangement enables a member of the network to offer its customers a convenient means to obtain access to FDIC insurance on large deposits by working solely with the bank or thrift with which the customer has a relationship. As a result, the bank or thrift is able to accept the large deposits without having to post collateral, which in turn makes more funds available to meet the credit needs of the community.

Reciprocal deposits have less interest rate risk and are less volatile since they generally come from the financial institution's current customer base or market franchise territory. With reciprocal deposits, the financial institution deals directly with the customer; in contrast, a financial institution typically has no direct contact with the owners of a brokered deposit that is obtained via a third-party intermediary. Customers use reciprocal transactions to obtain higher deposit insurance, but with the institution with which they already have a relationship. As a result, the reciprocal deposits tend to be "stickier" than classic "hot money" brokered deposits.

There currently is no distinction drawn in the TFR between different types of broker-originated deposits. This causes all deposits obtained with the assistance of an intermediary, regardless of how stable and "core-like" the deposit is, to be lumped together. This works to the disadvantage of both the reporting bank or thrift and the regulator. Banks and thrifts often shy away from "broker-originated deposits," in part to avoid any suggestion that they, like several banks and thrifts that have failed recently, are dependent on a volatile source of funding. Thus, many banks and thrifts pass on what may be in actual practice relatively stable funding sources. The OTS is disadvantaged by the current system because it has just one number – total broker-originated deposits – to analyze when trying to ascertain the liquidity position of a thrift. Given how many different sources of deposits are included within the category of "broker-originated deposits," there is a lot of "noise" in the data that obscures a bank or thrift's actual liquidity position.

To avoid these problems, we recommend that the OTS amend the TFR to distinguish reciprocal deposits from other types of broker-originated deposits. This would provide the OTS more granularity to differentiate specific types of deposits and a more precise reporting of reciprocal deposits so the OTS can better monitor this form of a thrift's funding activities.

One option to achieve this goal would be to revise OTS Form 1313, Schedule DI, to break out and report all reciprocal deposits separately from Total Broker-Originated Deposits as follows:

- Create a new line for "Total Reciprocal Deposits."

- Include in the Glossary to the Thrift Financial Report Instruction Manual a definition of a reciprocal deposit. We recommend the following definition of a "reciprocal" deposit:

> A reciprocal deposit is obtained when an insured depository institution exchanges funds, dollar-for-dollar, with members of a network of other insured depository institutions, where each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members, and all funds placed through the network are fully insured by the FDIC.

Reporting of sweep accounts from other institutions, including affiliated institutions, into an insured depository institution, on TFR Schedule DI.

The FDIC has requested comment on the treatment of deposits that consist of balances swept into an insured institution from another institution, such as balances swept from a brokerage affiliate, in its separate request for comment relating to Federal Deposit Insurance Corporation Assessments.[4] The ABA will comment further on the treatment of these sweep accounts in its comments on the assessment proposal. For purposes of the instant letter, it is sufficient to note that certain sweep products, such as those involving a transfer from affiliated institutions where the financial institution knows the identity of the customer, yield safer and more stable deposits than other forms of brokered deposits. Consequently, these deposits in the depository institution would present less risk to the Deposit Insurance Fund. The ABA notes further that the resolution of the issue of how to treat sweep accounts for purposes of FDIC assessments may require conforming revisions to the TFR Schedule DI and the related Thrift Financial Report Instruction Manual, including the Glossary.

Fiduciary Issues:

Schedule FS Changes

The OTS proposes to amend Schedule FS to provide more detail on fiduciary activities so as to improve their supervision and examination of banking institutions. In addition to eliminating confidential treatment for fiduciary income, expense, and loss data as of March 31, 2009, the OTS proposes to add a number of new reporting lines for certain types of accounts and investments. These new reporting items would be required for the December 31, 2009, Schedule FS filings.

Confidential Treatment Must Be Maintained.

Since first required in the Annual Report of Trust Assets, information on fiduciary income, expenses, and losses has been afforded confidential treatment. In past Federal Register notices, banking regulatory agencies, including the OTS, have stated that confidential treatment has been appropriate, because these data pertain to only a portion of the institution's operations. Even though the bank trust business has grown significantly since this reporting was first required, ABA believes this rationale still holds true and that these data must remain confidential.

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[4] 73 *Fed. Reg.* 61560, at 61565 – 61566 (October 16, 2008). The FDIC specifically notes that "[a]t present, it would be impossible to exclude these [swept] deposits, since institutions do not separately report them in the Call Report or TFR. Moreover, sweep programs may be structured so that swept balances are not brokered deposits. Nevertheless, the FDIC is particularly interested in comments on whether brokered deposits that consist of swept balances should be excluded from the ratio and, if so, how they should be excluded."

There are significant competitive concerns with the proposal to eliminate confidential treatment. As ABA stressed in its letter to the Federal Financial Institutions Examination Council when the information collection was first proposed in 1995, "our members feel quite strongly that competitors, bank or otherwise, should not be able to obtain profitability information about a particular trust department."[5] The public already has access to the number and types of fiduciary accounts, as well as the types of assets in those accounts. Making income, loss, and expense data publicly available may make it possible for competitors to deduce an institution's fee schedules. Many institutions closely guard these fee schedules as proprietary information.

The proposal states that "market participants" need access to this information to evaluate the financial condition of the institution. However, without a proper understanding of the scope of income, loss, and expense reporting in Schedule FS, market participants may misinterpret these data. The Financial Accounting Standards Board and the Sarbanes-Oxley Act require financial institutions to present their fiduciary income and expenses in their audited financial statements and annual reports differently from the instructions provided for Schedule FS. It would be extremely difficult to explain the difference in the financial presentation of these reports and Schedule FS. The reporting across multiple banks in a holding company structure makes this issue that much more problematic. Ultimately, ABA believes that the needs of market participants can be satisfied with the institution's audited financial statements.

Market participants also may be confused or misled by the Schedule FS fiduciary expense and loss information, because they would be unable to determine the source of the reported amount. For example, an institution's net losses from fiduciary and related services could arise solely from its stock transfer agency department. Yet, because stock transfer agent services are reported with trust administration, the market participant could misconstrue the true situation at the bank. Disclosure of loss information made out of context may affect an institution's reputation and its recruitment and retention of fiduciary clients.

<u>Modifications and Clarifications Needed for New Schedule FS Reporting</u>.

ABA understands the need for the OTS to have access to additional information about the banks under their supervision. Nonetheless, some of the new reporting needs to be clarified or modified to improve the reporting by our member institutions.

In the amended section, Fiduciary and Related Assets, the OTS proposes to add lines to indicate the value of assets held in, as well as the number of, Individual Retirement Accounts, Health Savings Accounts (HSA), and other similar accounts. ABA would like clarification on the reporting of these accounts that are held outside of the trust department and in the retail side of the institution. In these circumstances, ABA recommends that these accounts be excluded from the new reporting line in Schedule FS. If these accounts were required to be reported on Schedule FS, the income reported in the next section, Fiduciary and Related Services Income, would not comport with the reported assets. This disparity in reporting would be misleading. ABA strongly urges such clarification on the scope of the reporting.

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[5] Letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association, to Joe Cleaver, Executive Secretary, FFIEC (August 29, 1995) (on file with the ABA).

ABA supports the OTS's proposal to require reporting of IRAs, HSAs, and other similar accounts in new lines FS234 – FS237. However, we recommend that the OTS define the next line, "Other Retirement Accounts" (lines FS240 – FS243) to mean all other employee benefits and retirement-related accounts. Under this reporting structure, the values in lines FS220 through FS243 would be mutually exclusive. ABA similarly recommends that the next section, Fiduciary and Related Income, mirror our recommended changes to the previous section.

ABA requests clarification about and certain modifications to the reporting in Memoranda, Managed Assets Held in Fiduciary Accounts.

1. What is the definition of "private equity investments" in FS480 – FS483? Does this term include investments in closely-held family businesses?

2. How does the bank report investments in common trust funds and collective investment funds in which the bank manages or administers the units of the vehicle and the underlying assets of the vehicle? Should both the accounts holding the units and the accounts holding the underlying assets be reported in the Fiduciary and Related Assets section? How can the banks avoid double counting this information?

3. For reasons of simplicity, ABA asks that lines FS480 – FS483, Investments in Unregistered Funds and Private Equity Investments, be moved "above the line" so that it becomes a component of the total managed assets held in fiduciary accounts. Consequently, lines FS460 – FS463 would be defined as All Other Common and Preferred Stocks.

ABA member institutions have a number of suggested clarifications to the scope of the new reporting requirements for Memoranda, Corporate Trust and Agency Accounts.

1. "Substantive default" should be defined as an actual declaration of an Event of Default by the trustee with notice to investors. The Events of Default should include both technical and payment defaults.

2. "Amount outstanding" should mean unpaid principal balance or certificate balance.

3. Issues in a cure period should not be reported as "substantive defaults."

4. Some private placement leases require the trustee to delay or waive the declaration of an Event of Default unless requested in writing. These issues should not be reported as "substantive defaults" until an Event of Default exists.

5. When trustee duties are completed with respect to a defaulted trust (i.e., remedies are exhausted, or plan of reorganization is confirmed and the only remaining activity is distribution of plan proceeds), the trust should no longer be reported in lines FS516 and FS517.

ABA also requests further clarification of the meaning of the term "managed assets" as used throughout Schedule FS. Some of our member institutions are aware of inconsistent applications of the term by examiners and other institutions. For example, are discretionary accounts in which the management of the account or a portion of the account is delegated to a registered investment adviser, either affiliated and unaffiliated, still considered managed assets? We assume that non-discretionary accounts that are managed by a registered advisor would be reported as custody or non-managed accounts. We appreciate any further clarification in the Schedule FS instructions.

Additional Time Needed to Incorporate Schedule FS Changes.

The OTS must provide more time for reporting institutions to make the appropriate changes to their systems. The process for making these changes is complex, requiring a detailed analysis of the needed system programming revisions, as well as system testing to ensure proper categorization of the newly reported items. Many of the vendors that provide the systems that track the data reported on the Schedule FS are extremely busy making changes to accommodate the Federal Reserve Board and Securities and Exchange Commission Regulation R. In addition, for purposes of the new reporting in Memoranda, Corporate Trust and Agency Accounts, some banks use multiple systems to track default status of issues. Implementation of a single system of record for regulatory reporting would require a significant financial commitment and an implementation period longer than the proposal allows. For all of the reasons stated above, at a minimum, the changes should not be effective until December 31, 2010.

Conclusion

The ABA appreciates the opportunity to comment on the proposed revisions included in the TFR Request for Comment. We urge the OTS to consider including in the final revisions to the TFR the suggested changes noted above, which we believe will improve the value of the TFR. We appreciate the OTS's efforts to strike the appropriate balance between including items to help monitor risk sensitivity while not creating burdensome or unnecessary reporting.

We invite the staff of the OTS to contact Kathleen P. McTighe at (202) 663-5331 or kmctighe@aba.com, if they have any questions. For questions regarding comments on the proposed Schedule FS changes, please call or write Phoebe Papageorgiou at (202) 663-5053 or phoebep@aba.com. Thank you for considering our comments and recommendations.

Sincerely,

K.P. McTighe

Kathleen P. McTighe

Phoebe A. Papageorgiou

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