CALIFORNIA BANKERS ASSOCIATION
A DIVISION OF THE WESTERN BANKERS ASSOCIATION

Regulatory Compliance Bulletin

January 2, 2019

Agencies Seek Comment on Reduced Reporting for Covered Depository Institutions

The FDIC, the OCC and the Federal Reserve (collectively, the "agencies") are seeking comment on a proposed rule to implement Section 205 of the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA).[1]

Comments are due on or before January 19, 2019. Instructions on how to submit comments appear at the end of this Bulletin. Specific questions posed by the agencies appear in bold italics.

Background

Recognizing that institutions devote staffing and resources to compile and file Consolidated Reports of Condition and income (Call Reports), in 2014 the Federal Financial Institutions Examination Council (FFIEC) started an initiative to reduce the reporting burden on small institutions. The FFIEC evaluated the feasibility and merits of creating a more streamlined Call Report, resulting in the creation of the FFIEC 051 Call Report for institutions with less than $1 billion in total assets and which contained approximately 40 percent fewer data items than the FFIEC 041 Call Report then in effect.

Section 205 of EGRRCPA amends Section 7(a) of the Federal Deposit Insurance Act,[2] and requires the agencies to issue regulations that allow for a reduced reporting requirement for a "covered depository institution" when the institution makes the first and third call report in a calendar year.

Section 7(a) now defines a "covered depository institution" as an institution that has less than $5 billion in total consolidated assets and satisfies such other criteria as may be established by the appropriate agency.

The Proposed Rule

Definition of a "Covered depository institution"

The agencies intend to expand the number of institutions permitted to file the FFIEC 051 Call Report, and implement reduced reporting in the first and third reports of each calendar year, by refining the definition of "covered depository institution," as they are authorized to do under Section 7(a).

The agencies propose revising the eligibility criteria for filing the FFIEC 051

[1] Enacted May 24, 2018, Public Law No. 115-174

[2] 12 U.S.C. §1817(a)

Call Report to match the criterial to qualify as a "covered depository institution."

To summarize, a "covered depository institution" is an institution that meets all of the following criteria:

(1) it has less than $5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding calendar year;
(2) it has no foreign offices;
(3) it is not required to or has not elected to use Subpart E of the agencies' regulatory capital rules to calculate its risk-based capital requirements; and
(4) it is not a large or highly complex institution for purposes of the FDIC's deposit insurance assessment regulations.[3]

The OCC's definition would exclude institutions that file the FFIEC 002 report of condition.

The FDIC's definition would exclude state-licensed insured branches of foreign banks.

Note that the non-asset-size criteria are identical to the current eligibility criteria for institutions with less than $1 billion in total assets for filing an FFIEC 051 Call Report, with the exception of the criterion related to treatment under the FDIC's assessment regulations.

[3] See 12 CFR §327.8(e), (f), (g) and (s).

Asset Threshold

The proposed rule would define "total consolidated assets" as total assets as reported in an institution's report of condition for the second calendar quarter of the previous calendar year.

Question 1: What are the advantages and disadvantages of this measurement protocol? Should the agencies use average total assets over a specified period rather than total assets on a specific reporting date? Or, is there a more appropriate methodology?

Question 2: The agencies are not proposing to immediately disqualify an institution from using reduced reporting if it crosses the $5 billion asset threshold, regardless of how the institution crossed the threshold, including through a merger or acquisition. Is this appropriate, and why?

Other Eligibility Criteria

The non-asset size criteria are identical to the current eligibility criteria for institutions with less than $1 billion in total assets to file the FFIEC 051 Call Report, with the exception of the criterion related to treatment under the FDIC's regulations.

In contrast to treatment of institutions that cross the $5 billion asset size threshold, it is proposed that, if at any time an institution fails the non-asset size criteria on an applicable measurement date, it is no longer eligible to file the FFIEC 051 Call Report beginning in the quarter in which the institution failed to meet the non-asset size criteria.

International Activities

An institution that has foreign offices or that is an insured branch of a foreign bank is proposed to be excluded from the definition of “covered deposit institution.” This criterion is identical to the current eligibility criteria for the ability to file the FFIEC 051 Call Report.

Advanced Approaches Institutions

An advanced approaches institution is an institution that has consolidated total assets equal to $250 billion or more, has consolidated total on-balance sheet foreign exposure equal to $10 billion or more, or is a subsidiary of a depository institution or holding company that uses the advanced approaches to calculate its total-risk weighted assets. (These institutions are currently precluded from filing the FFIEC 051 Call Report.)

Advanced approaches institutions are proposed to be excluded from the definition of a “covered depository institution.”

Institutions Assessed as Large or Highly Complex by the FDIC

Under the FDIC’s assessment regulations, large and highly complex institutions are assessed using combined CAMELS ratings and certain forward-looking financial measures to assess the risk such institutions pose to the Deposit Insurance Fund.

Institutions assessed by the FDIC to be large or highly complex institutions are proposed to be excluded from the definition of a “covered depository institution.”

Question 3: Do the other eligibility criteria set an appropriate scope for institutions eligible for reduced reporting? Are there additional institutions or classes of institutions meeting the asset-size criterion that should be made eligible or ineligible for reduced reporting, and, if so, why?

Reduced Reporting

In addition to expanding the number of institutions eligible to file the FFIEC 051 Call Report, the agencies propose to implement the reduced reporting required by Section 205 of EGRRCPA by further reducing the reporting required on the FFIEC 051 Call Report in the first and third calendar quarters.

The proposal is to reduce the frequency of reporting for approximately 37 percent of the existing data items in the report from quarterly to semiannual. The reduction would apply primarily to items related to risk-weighting of certain assets and other exposures under the agencies’ regulatory capital rules, fiduciary and related services assets and income, and troubled debt restructuring by loan category.

Question 4: Is the agencies’ proposal to implement reduced reporting by expanding eligibility to file the FFIEC 051Call Report appropriate? If not, what would be a more appropriate way to

implement the reduced reporting requirements of Section 205 of EGRRCPA, and why?

Please note that the notice of proposed rulemaking contains a granular analysis of the precise changes that would be made to the FFIEC 051 Call Report to implement the reduced reporting requirement. A discussion of those details is beyond the scope of this Bulletin, but CBA members are encouraged to review and comment as appropriate.

Instructions for Submitting Comments

The notice of proposed rulemaking and request for comments can be reviewed at https://www.fdic.gov/news/news/press/2018/pr18082a.pdf?utm_campaign=ABA-Newsbytes-110818&utm_medium=email&utm_source=Eloqua

Comments directed to the OCC: You may submit comments to the OCC by any of the methods set forth below.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2018-0032" in your comment.

Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Reduced Reporting for Covered Depository Institutions" to facilitate the organization and distribution of the comments.

You may submit comments by any of the following methods:

• Federal eRulemaking Portal—"Regulations.gov": Go to www.regulations.gov. Enter "Docket ID OCC-2018-0032" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.

• Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

• E-mail: regs.comments@occ.treas.gov.

• Mail: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

• Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Comments to the Board of Governors of the Federal Reserve: You may submit comments, identified by Docket No. R-1618 and RIN 7100-AF12, by any of the following methods:

• Agency Website: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

• E-mail: regs.comments@federalreserve.gov. Include docket and RIN numbers in the subject line of the message.

• FAX: (202) 452-3819 or (202) 452-3102.

• Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's website at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request.

Comments to the FDIC: You may submit comments, identified by FDIC RIN 3064-AE82, by any of the following methods:

• Agency Website: https://www.fdic.gov/regulations/laws/federal/. Follow instructions for submitting comments on the Agency website.

• Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• Hand Delivery/Courier: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW. building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• Email: *comments@FDIC.gov*. Comments submitted must include "FDIC" and "RIN 3064-AE82" on the subject line of the message.

All comments received must include "FDIC" and "RIN 3064-AE82" for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/*, including any personal information provided.

The information contained in this CBA Regulatory Compliance Bulletin is not intended to constitute, and should not be received as, legal advice. Please consult with your counsel for more detailed information applicable to your institution.