(1980). On April 18, 1984, in Order No. 676A, the bankruptcy court authorized MSPA to purchase the 351.50-mile portion of the line. On April 30, 1984, MSPA and Kyle entered into an agreement and Kyle was authorized in *Kyle Railroad Company—Notice of Modified Certificate of Public Convenience and Necessity*, Finance Docket No. 30490 (ICC served June 4, 1984) to acquire from MSPA and to operate the line. Kyle is seeking the Board's authority as required by the agreement to acquire and operate the line and to remove the potential impediment to exercising its option to acquire the line.

The proposed transaction is scheduled to be consummated on June 1, 2009.

Kyle certifies that its projected annual revenues as a result of the transaction will not result in Kyle becoming a Class II or Class I rail carrier. However, because its projected annual revenues will exceed $5 million, Kyle also has certified to the Board that it has complied with the employee notice requirements of 49 CFR 1150.42(e). Pursuant to that provision, the exemption may not become effective until 60 days from the January 13, 2009, date of the revised certification to the Board, which would be March 13, 2009.

According to Kyle, there is no provision or agreement that may limit future interchange with a third-party connecting carrier.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by March 6, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35212, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicants' representative, Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: January 16, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–1544 Filed 1–27–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On September 23, 2008, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments received on the proposal, the FFIEC and the agencies will move forward with the most of the reporting changes, with limited modifications in response to certain comments, on the phased-in basis that had been proposed. The FFIEC and the agencies are continuing to evaluate certain other proposed revisions in light of the comments received thereon and will not implement these revisions on their proposed effective dates.

DATES: Comments must be submitted on or before February 27, 2009.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated

Reports of Condition and Income, 3064–0052,'' by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.

• *Mail:* Herbert J. Messite (202–898–6834), Counsel, Attn: Comments, Room F–1052, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

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

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the 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, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Herbert J. Messite, Counsel, (202) 898–6834, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise the Call Report, which are currently approved collections of information.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,620 national banks.

Estimated Time per Response: 46.76 burden hours.

Estimated Total Annual Burden: 303,027 burden hours.

Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 877 state member banks.

Estimated Time per Response: 53.30 burden hours.

Estimated Total Annual Burden: 186,976 burden hours.

FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,110 insured state nonmember banks.

Estimated Time per Response: 37.36 burden hours.

Estimated Total Annual Burden: 763,638 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 650 hours per quarter, depending on an individual institution's circumstances.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). At present, except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data are also used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

I. Overview

On September 23, 2008, the agencies requested comment on proposed revisions to the Call Report (73 FR 54807). The agencies proposed to implement the proposed changes to the Call Report requirements on a phased-in basis during 2009. A limited group of changes were proposed to take effect March 31, 2009; most revisions were proposed to take effect June 30, 2009; and a final group of revisions applicable only to trust institutions that complete the Call Report's Fiduciary and Related Services schedule were proposed to take effect December 31, 2009.[1]

The Call Report, as it has been proposed to be revised, will better support the agencies' surveillance and supervision of individual banks and enhance their monitoring of the industry's condition and performance. The proposed revisions reflected a thorough and careful review of the agencies' data needs in a variety of areas as banks encountered the most turbulent environment in more than a decade. Thus, the proposed revisions included new items that focus on areas in which the banking industry has faced heightened risk as a result of market

[1] In addition, on November 26, 2008, OMB approved the agencies' emergency clearance requests to add two items to Call Report Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments, effective December 31, 2008, that are applicable to all banks participating in the FDIC's Transaction Account Guarantee Program. A participating bank must report the amount and number of its noninterest-bearing transaction accounts, as defined in the FDIC's regulations governing the program, of more than $250,000 in Schedule RC–O, Memorandum items 4.a and 4.b. The FDIC will use this information to calculate assessments for participants in the Transaction Account Guarantee Program. Because OMB's approval of the agencies' emergency clearance request expires on May 31, 2009, the agencies proposed on December 23, 2008, under OMB's normal clearance procedures to collect these two items each quarter until the Transaction Account Guarantee Program ends. See 73 FR 78794.

turmoil and illiquidity and weakening economic and credit conditions. Where possible, the agencies sought to establish reporting thresholds for proposed new items. Other proposed new items would be relevant to only a small percentage of banks.

The agencies collectively received comments from seven respondents: Two banks, one bank holding company, three bankers' organizations, and a bank insurance consultant. None of these commenters specifically addressed all of the aspects of the proposal. Rather, individual respondents commented upon one or more of the proposed Call Report changes. In two cases, commenters brought up reporting matters that were not addressed in the agencies' proposal. The following is a summary of the general comments received on the proposed Call Report revisions. Sections II, III, and IV of this notice identify the changes proposed to take effect March 31, June 30, and December 31, 2009, respectively; discuss the agencies' evaluation of the comments received on the proposed changes that the FFIEC and the agencies have decided to implement, as modified; and describe the proposed Call Report revisions that remain under review by the FFIEC and the agencies.

One bankers' organization stated that it believed that the proposed revisions would provide additional information that would be useful to the agencies' assessment of risk. This organization expressed general agreement, on balance, with the proposed revisions, but also offered several suggested changes for the agencies' consideration.[2] Another bankers' organization indicated its understanding of the agencies' need for more information on certain types of loans currently under stress, but noted that the proposed revisions would require many community banks to submit significantly more data in the Call Report. This organization hoped that the increased staff time that would be needed to provide the proposed Call Report data would be offset by a reduction in on-site examination time through examiners' use of these data to better focus their examination priorities. In this regard, the agencies' intent in proposing the revisions to the Call Report was to enhance their risk-focused supervision, both from an off-site and an on-site perspective. The third bankers' organization commented on the amount of lead time necessary for institutions to implement systems changes to enable them to provide the requested additional data, recommending a minimum of three months between the agencies' publication of final revisions in the **Federal Register** and the effective date of the reporting changes.

Two commenters submitted comments on reporting issues that were not addressed in the agencies' Call Report proposal. One bank holding company sent a copy of separate correspondence that it had previously sent to three organizations suggesting a suspension of the accounting rules for other-than-temporary impairments on investment securities. By law, the accounting principles applicable to the Call Report must be consistent with or, if certain conditions are met, no less stringent than generally accepted accounting principles.[3] Therefore, the suggested suspension of accounting rules cannot be implemented for Call Report purposes.

One bankers' organization recommended that the Call Report be revised to require ''reciprocal deposits'' [4] to be reported separately from brokered deposits. This bankers' organization also commented on the reporting of certain sweep accounts from other institutions, including affiliated institutions, in the Call Report. The impetus for the bankers' organization's comments about the reporting of these two types of deposits was a Notice of Proposed Rulemaking (NPR) on which the FDIC was simultaneously requesting comment concerning amendments to its deposit insurance assessment regulations (12 CFR part 327).[5] In the NPR, the FDIC proposed to alter the way in which it differentiates for risk in the risk-based assessment system; revise deposit insurance assessment rates, including base assessment rates; and make technical and other changes to the rules governing the risk-based assessment system. In its comment letter to the agencies on the proposed Call Report revisions, the bankers' organization observed that the Call Report may need to be revised depending on the FDIC's decisions on the treatment of these accounts for deposit insurance assessment purposes. Accordingly, the FFIEC and the agencies will monitor the outcome of the FDIC's rulemaking for assessments and the need for new Call Report data items for reciprocal deposits and certain sweep accounts to support any modifications that the FDIC makes in its risk-based assessment system in a final rule. In this regard, as proposed by the FDIC, these modifications would take effect April 1, 2009, which means that any new reporting requirements to provide data for the FDIC's risk-based assessment system would need to be in place June 30, 2009.

After considering the comments received on the proposal, the FFIEC and the agencies will move forward with most of the reporting changes, with limited modifications in response to certain comments, on the phased-in basis that had been proposed. The FFIEC and the agencies are continuing to evaluate certain other proposed revisions in light of the comments received thereon and will not implement these revisions on their proposed effective dates.[6]

The agencies recognize institutions' need for lead time to prepare for reporting changes, which led them to propose the phased-in implementation schedule for 2009. The Call Report items that will be new or revised effective March 31, 2009, are limited in number and all but one are linked to changes in generally accepted accounting principles taking effect at the same time. For the March 31, 2009, report date, banks may provide reasonable estimates for any new or revised Call Report item initially required to be reported as of that date for which the requested information is not readily available. This same policy on the use of reasonable estimates will apply to the reporting of other new or revised items when they are first implemented effective June 30 and December 31, 2009. In addition, the specific wording of the captions for the new or revised Call Report data items discussed in this notice and the numbering of these data items should be regarded as preliminary.

Type of Review: Revision of currently approved collections.

II. Call Report Revisions Proposed for March 2009

The agencies received no comments on the following two revisions that were proposed to take effect as of March 31,

[2] One bank that is a member of this bankers' organization referred to the organization's comment letter and appeared to concur with the organization's comments, but also addressed one aspect of the agencies' proposal on which the bankers' organization did not specifically comment.

[3] See 12 U.S.C. 1831n(a).

[4] The organization also recommended that ''reciprocal deposit'' be defined as a deposit ''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.''

[5] 73 FR 61560, October 16, 2008.

[6] See section II.C on unused commitments, section III.D on past due and nonaccrual trading assets, and the portion of section III.E addressing the present value of unpaid premiums on sold credit protection.

2009, and therefore these revisions will be implemented as proposed:

- Revisions to several Call Report schedules in response to accounting changes applicable to noncontrolling (minority) interests in consolidated subsidiaries; and
- The addition of a new item to be reported annually on the bank's fiscal year-end date.

The agencies received one or more comments addressing each of the following proposed March 31, 2009, revisions:

- The addition of new items in response to a revised accounting standard that will provide information on held-for-investment loans and leases acquired in business combinations;
- Clarifications of the definition of the term ''loan secured by real estate'' and of the instructions for reporting unused commitments;
- Exemptions from reporting certain existing Call Report items for banks with less than $1 billion in total assets;
- Instructional guidance on quantifying misstatements in the Call Report; and
- The elimination of confidential treatment for data collected on fiduciary income, expenses, and losses.

The comments related to each of these proposed revisions are discussed below along with the agencies' response to these comments.

A. Loans and Leases Acquired in Business Combinations

Banks must apply Statement of Financial Accounting Standards No. 141 (Revised), Business Combinations (FAS 141(R)), which was issued in December 2007, prospectively to business combinations for which the acquisition date is on or after the beginning of their first annual reporting period beginning on or after December 15, 2008. Thus, for banks with calendar year fiscal years, FAS 141(R) will apply to business combinations with acquisition dates on or after January 1, 2009. Compared to current accounting practice, FAS 141(R) significantly changes the accounting for those loans and leases acquired in business combinations that will be held for investment.[7] In response to this accounting change, the agencies proposed to add new items to the Call Report loan and lease schedule (Schedule RC–C, part I) that would mirror the acquisition-date disclosures required by FAS 141(R). These new items would disclose the following information for four categories of loans (not subject to SOP 03–3) and leases that were acquired in each business combination that occurred during the year-to-date reporting period:

- The fair value of the loans and leases;
- The gross contractual amounts receivable; and
- The best estimate at the acquisition date of the contractual cash flows not expected to be collected.

The four categories of acquired held-for-investment loans (not subject to SOP 03–3) and leases are:

- Loans secured by real estate;
- Commercial and industrial loans;
- Loans to individuals for household, family, and other personal expenditures; and
- All other loans and all leases.

These new items will be completed by banks that have engaged in business combinations that must be accounted for in accordance with FAS 141(R) or that have been involved in push down accounting transactions to which the measurement principles in FAS 141(R) apply, i.e., in general, transactions for which the acquisition date is on or after January 1, 2009. A bank that has completed one or more business combinations or has applied push down accounting during the current calendar year would report these acquisition date data (as aggregate totals if multiple business combinations have occurred) in each Call Report submission after the acquisition date during that year. The acquisition date data would not be reported in years after the year in which the acquisition occurs.

One bankers' organization stated that it concurred with the agencies' proposal to require these additional disclosures for loans (not subject to SOP 03–3) and leases acquired in business combinations that occurred during the reporting period. No other commenter addressed these proposed additional disclosures. Accordingly, the agencies will implement these items in the March 31, 2009, Call Report, as proposed.

In their proposal, the agencies also stated that they were considering whether banks that have engaged in FAS 141(R) business combinations should provide additional information in the Call Report (beyond the disclosures described above) about acquired held-for-investment loans (not subject to SOP 03–3) and leases and the loss allowances established for them in periods after their acquisition. The proposal stated that the additional items under consideration included the outstanding balance of these acquired loans and leases, their carrying amount, and the amount of allowances for post-acquisition credit losses on these loans and leases. The agencies indicated that this information would help them as well as other Call Report users to track management's judgments regarding the collectability of the acquired loans and leases in periods after the acquisition date and evaluate fluctuations in the level of the overall ALLL as a percentage of the held-for-investment loan and lease portfolio in periods after a business combination. The agencies requested comment on the merits and availability of these post-acquisition loan and lease data and the period of time after a business combination that this information should be reported.

Two bankers' organizations commented on these additional loan and lease disclosures. One organization did not specifically address the merits of this information, stating only that if banks were required to report these additional data, they should report it only through the end of the calendar year of the business combination. The second organization agreed with the first organization concerning the reporting period for these additional data. However, this organization also stated its belief that the post-acquisition data on acquired loans and leases would often not be available because acquired performing loans and leases would tend to be combined with, rather than segregated from, a bank's other performing loans and leases.

After considering these comments, the agencies have decided for the time being not to add items to the Call Report for the outstanding balance of held-for-investment loans (not subject to SOP 03–3) and leases acquired in FAS 141(R) business combinations, their carrying amount, and the amount of allowances for post-acquisition credit losses on these loans and leases. The agencies will continue to monitor accounting and disclosure practices with respect to these acquired loans and leases and their post-acquisition allowances and assess their data needs in this area. Any future revisions to the Call Report to collect data on acquired loans and leases and post-acquisition allowances will be subject to notice and comment.

B. Clarification of the Definition of Loan Secured by Real Estate

The agencies have found that the definition of a ''loan secured by real estate'' in the Glossary section of the Call Report instructions has been interpreted differently by Call Report preparers and users. This has led to inconsistent reporting of loans collateralized by real estate in the loan

[7] This change in accounting treatment does not apply to acquired held-for-investment loans within the scope of American Institute of Certified Public Accountants Statement of Position 03–3, Accounting for Certain Loans or Debt Securities Acquired in a Transfer (SOP 03–3).

schedule (Schedule RC–C) and other schedules of the Call Report that collect loan data. As a result, the agencies proposed to clarify the definition by explaining that the estimated value of the real estate collateral must be greater than 50 percent of the principal amount of the loan at origination in order for the loan to be considered secured by real estate. Banks would apply this clarified definition prospectively and they need not reevaluate and recategorize loans that they currently report as loans secured by real estate into other loan categories on the Call Report loan schedule.

One bankers' organization stated that it believes that the proposed definition of a ''loan secured by real estate'' is workable and provides additional clarity. One bank submitted examples involving loans with real estate as collateral and asked how they would be reported based on the revised definition. The agencies will implement the clarified definition of ''loan secured by real estate'' as proposed but, in response to this latter comment, they will add examples to the definition to assist banks in understanding how it should be applied.

C. Clarification of Instructions for Unused Commitments

Banks report unused commitments in Schedule RC–L, item 1. The instructions for this item identify various arrangements that should be reported as unused commitments, including but not limited to commitments for which the bank has charged a commitment fee or other consideration, commitments that are legally binding, loan proceeds that the bank is obligated to advance, commitments to issue a commitment, and revolving underwriting facilities. However, the agencies have found that some banks have not reported commitments that they have entered into until they have signed the loan agreement for the financing that they have committed to provide. Although the agencies consider these arrangements to be within the scope of the existing instructions for reporting commitments in Schedule RC–L, they believe that these instructions may not be sufficiently clear. Therefore, the agencies proposed to revise the instructions for Schedule RC–L, item 1, ''Unused commitments,'' to more clearly and completely explain the arrangements that should be reported in this item.

All three bankers' organizations submitting comments on the proposed Call Report revisions specifically addressed the proposed instructional clarification pertaining to unused commitments. One organization agreed that clarification is needed, but recommended that commitments to issue a commitment in the future, including those entered into even though the related loan agreement has not yet been signed, should be removed from the list of types of arrangements that the instructions would direct banks to report as unused commitments. The other two bankers' organizations also commented on the inclusion of this type of arrangement as an unused commitment. One organization expressed concern about reporting ''commitments that contain a relatively high level of uncertainty until a loan agreement has been signed or the loan has been funded with a first advance'' and the reliability of data on such commitments. The other organization stated that because some banks do not have systems for tracking such arrangements, the instructions should in effect permit banks to exclude commitment letters with an expiration date of 90 days or less. Finally, the first bankers' organization also recommended that the instructions for reporting unused commitments should state that amounts conveyed or participated to others that the conveying or participating bank is not obligated to fund should not be reported as unused commitments by the conveying or participating bank.

The agencies are continuing to evaluate these commenters' recommendations. As a consequence, the agencies will not revise the instructions for Schedule RC–L, item 1, ''Unused commitments,'' effective March 31, 2009, as proposed and the existing instructions for this Schedule RC–L item will remain in effect. Once the agencies conclude their deliberations on these recommendations and determine whether and how to revise the instructions for reporting ''Unused commitments'' in Schedule RC–L, item 1, they will publish their conclusions in a separate **Federal Register** notice and submit them to OMB for review and approval. If the instructions to Schedule RC–L, item 1, are revised, the clarifications to these instructions would take effect no earlier than December 31, 2009.

D. Exemptions from Reporting for Certain Existing Call Report Items

The agencies have identified certain Call Report items for which the reported data are of lesser usefulness for banks with less than $1 billion in total assets. Accordingly, the agencies proposed to exempt such banks from completing the following Call Report items effective March 31, 2009:

- Schedule RI, Memorandum item 2, ''Income from the sale and servicing of mutual funds and annuities (in domestic offices)'';
- Schedule RC–B, Memorandum items 5.a through 5.f, ''Asset-backed securities,'' on the FFIEC 031 report;[8]
- Schedule RC–L, item 2.a, ''Amount of financial standby letters of credit conveyed to others''; and
- Schedule RC–L, item 3.a, ''Amount of performance standby letters of credit conveyed to others.''

One commenter, a bank insurance consultant, objected to the agencies' proposal to exempt banks with less than $1 billion in total assets from reporting Schedule RI, Memorandum item 2, ''Income from the sale and servicing of mutual funds and annuities (in domestic offices),'' stating that this item should be preserved in all bank Call Reports. This commenter also stated that the agencies had not explained how they had determined that the collection of this Call Report item from banks in this size range is of lesser usefulness. This commenter added that by eliminating the reporting of this income information for these banks, ''we will lose our sole window into community banks' mutual fund and annuity activities.''

Memorandum item 2 was added to Schedule RI of the Call Report in 1994. At that time, the agencies collected limited information on banks' noninterest income. However, since 2001, the agencies have significantly expanded the amount of detailed information they collect on noninterest income in recognition of the increasing importance of such income to banks' earnings. As a result, all banks, regardless of size, currently report the amount of ''Fees and commissions from securities brokerage'' and ''Fees and commissions from annuity sales'' in Schedule RI, items 5.d.(1) and 5.d.(3), each quarter. Item 5.d.(1) specifically includes a bank's income from the sale and servicing of mutual funds. Thus, in general, the income that a bank reports in Schedule RI, Memorandum item 2, will have been included in these two noninterest income items in the body of Schedule RI. However, although the bank insurance consultant stated that as of ''June 30, 2008, more banks with less than $1 billion in assets reported mutual fund and annuity income'' in Memorandum item 2 than reported eight other types of noninterest income in the body of Schedule RI,'' the consultant did not provide comparative

[8] On the FFIEC 041 report, banks with less than $1 billion in assets are currently exempt from completing these Memorandum items.

data for the number of such banks reporting ''Fees and commissions from securities brokerage'' or ''Fees and commissions from annuity sales.''

In addition, the agencies will continue to use the Call Report to identify banks that sell private label or third party mutual funds and annuities (Schedule RC–M, item 6) as well as banks managing assets held in proprietary mutual funds and annuities (Schedule RC–M, item 7). Furthermore, Call Report users within the agencies have indicated that Memorandum item 2 on ''Income from the sale and servicing of mutual funds and annuities'' is regarded as being of lesser usefulness than the noninterest income items with which it overlaps (items 5.d.(1) and 5.d.(3) of Schedule RI). Accordingly, after considering the views expressed by the bank insurance consultant, the agencies have reaffirmed that the existing Call Report income statement items for ''Fees and commissions from securities brokerage'' and ''Fees and commissions from annuity sales'' are sufficient to meet their ongoing needs for income data on these types of activities from banks with less than $1 billion in total assets and that such banks should be exempt from separately reporting ''Income from the sale and servicing of mutual funds and annuities'' beginning March 31, 2009.

The agencies received no comments specifically addressing the other Call Report items for which they proposed to exempt banks with less than $1 billion in assets from continued reporting and will implement these exemptions as of March 31, 2009, as proposed.

E. Quantifying Misstatements in the Call Report

The Glossary entry for ''Accounting Changes'' in the Call Report instructions includes a section on ''Corrections of Accounting Errors'' that provides guidance on reporting such corrections that is consistent with FASB Statement No. 154, *Accounting Changes and Error Corrections* (FAS 154). However, neither FAS 154 nor the Glossary entry for ''Accounting Changes'' specifies the appropriate method to quantify an error or misstatement for purposes of evaluating materiality.

In September 2006, the SEC staff issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (SAB 108),[9] which advises that the impact of correcting all misstatements on current year financial statements should be accomplished by quantifying an error under both the ''rollover'' and ''iron curtain'' approaches[10] and by evaluating the error measured under each approach. When either approach results in a misstatement that is material, after considering all relevant quantitative and qualitative factors, an adjustment to the financial statements would be required. Guidance on the consideration of all relevant factors when assessing the materiality of misstatements is provided in the SEC's Staff Accounting Bulletin No. 99, *Materiality* (SAB 99).[11] SAB 108 observes that when the correction of an error in the current year would materially misstate the current year's financial statements because the correction includes the effect of the prior year misstatements, the prior year financial statements should be corrected.

The agencies believe that the guidance in SAB 108 and SAB 99 represents sound accounting practices that all banks should follow for purposes of quantifying misstatements and considering all relevant factors when assessing the materiality of misstatements in their Call Reports. Accordingly, the agencies proposed to incorporate the guidance in these two Staff Accounting Bulletins into the section of the ''Accounting Changes'' Glossary entry on error corrections.

One banking organization supported the agencies' proposal for quantifying misstatements in the Call Report because it would provide a uniform approach for dealing with misstatements. The agencies will implement this instructional change as proposed.

F. Eliminating Confidential Treatment for Fiduciary Income, Expense, and Loss Data

An important public policy issue for the agencies has been how to use market discipline to complement supervisory resources. Market discipline relies on market participants having sufficient appropriate information about the financial condition and risks of banks. The Call Report, in particular, is widely used by securities analysts, rating agencies, and large institutional investors as sources of bank-specific data. Disclosure that increases transparency should lead to more accurate market assessments of individual banks' performance and risks. This, in turn, should result in more effective market discipline on banks.

Despite this emphasis on market discipline, the FFIEC and the agencies currently accord confidential treatment to the information that certain institutions report in Call Report Schedule RC–T, Fiduciary and Related Services, on fiduciary and related services income, expenses, and losses (items 12 through 18, items 19.a through 23, and Memorandum item 4). Approximately 400 institutions that exercise fiduciary powers and have either total fiduciary assets greater than $250 million or gross fiduciary and related services income greater than 10 percent of revenue report their fiduciary and related services income quarterly and their fiduciary and related services expenses and losses annually as of year-end. Around 200 institutions that exercise fiduciary powers, have total fiduciary assets greater than $100 million but less than or equal to $250 million, and do not meet the fiduciary income test mentioned above report their fiduciary and related services income, expenses, and losses annually as of year-end. An additional 1,000 institutions that exercise fiduciary powers, have total fiduciary assets of $100 million or less, and do not meet the fiduciary income test mentioned above are exempt from reporting their fiduciary and related services income, expenses, and losses.

Data on fiduciary and related services income, expenses, and losses (except for gross fiduciary and related services income, which is also reported in each institution's Call Report income statement) are the only financial information currently collected on the Call Report that is treated as confidential on an individual institution basis. Nevertheless, the agencies publish aggregate data derived from these confidential items. The agencies have accorded confidential treatment to the fiduciary services income data for individual institutions since it began to be collected in 1997. However, the agencies do not preclude institutions from publicly disclosing the fiduciary and related services income, expense, and loss data that the agencies treat as confidential.

The agencies originally applied this confidential treatment to the fiduciary

[9] SAB 108 can be accessed at *http://www.sec.gov/interps/account/sab108.pdf*. SAB 108 has been codified as Topic 1.N. in the SEC's Codification of Staff Accounting Bulletins.

[10] According to SAB 108, the rollover approach ''quantifies a misstatement based on the amount of the error originating in the current year income statement,'' which ''ignores the 'carryover effects' of prior year misstatements.'' In contrast, the ''iron curtain approach quantifies a misstatement based on the effects of correcting the misstatement existing in the balance sheet at the end of the current year, irrespective of the misstatement's year(s) of origination.''

[11] SAB 99 can be accessed at *http://www.sec.gov/interps/account/sab99.htm*. SAB 99 has been codified as Topic 1.M. in the SEC's Codification of Staff Accounting Bulletins.

and related services income, expense, and loss information because these data generally pertain to only a portion of a reporting institution's total operations and not to the institution as a whole. However, the agencies make publicly available on an individual bank basis the Call Report data they collect on income and expenses from foreign offices from banks with such offices where foreign activities exceed certain levels even though these data pertain to only a portion of these banks' total operations.

In addition, under the Uniform Interagency Trust Rating System, the agencies assign a rating to the earnings of an institution's fiduciary activities at those institutions with fiduciary assets of more than $100 million, which are also the institutions that report their fiduciary and related services income, expenses, and losses in Call Report Schedule RC–T. The agencies' evaluation of an institution's trust earnings considers such factors as the profitability of fiduciary activities in relation to the size and scope of those activities and the institution's overall business, taking this into account by functions and product lines. Although the agencies' ratings for individual institutions are not publicly available, the reason for rating the trust earnings of institutions with more than $100 million in fiduciary assets—its effect on the financial condition of the institution—means that fiduciary and related services income, expense, and loss information for these institutions is also relevant to market participants and others in the public as they seek to evaluate the financial condition and performance of individual institutions. Increasing the transparency of institutions' fiduciary activities by making individual institutions' fiduciary income, expense, and loss data available to the public should improve the market's ability to assess these institutions' performance and risks and thereby enhance market discipline. Accordingly, the agencies proposed to eliminate the confidential treatment for the data on fiduciary and related services income, expenses, and losses that are reported in Schedule RC–T beginning with the amounts reported as of March 31, 2009. Fiduciary and related services income, expense, and loss data reported in Schedule RC–T for report dates prior to March 31, 2009, would remain confidential.

One bankers' organization opposed eliminating the confidential treatment of fiduciary income, expense, and loss data, stating that the agencies' original reason for according confidential treatment to these data, *i.e.*, that these data generally pertain to only a portion of a reporting institution's total operations and not to the institution as a whole, still holds true. This commenter also cited significant competitive concerns with the proposed elimination of confidential treatment because making income, expense, and loss data publicly available ''may make it possible for competitors to deduce'' an individual institution's fee schedules. In addition, the bankers' organization believed that these publicly disclosed data may be subject to misinterpretation by market participants who would lack a proper understanding of the scope of the income, expense, and loss data reported in Schedule RC–T because fiduciary income and expenses are presented differently in institutions' audited financial statements prepared in accordance with GAAP. Therefore, this commenter believes that institutions' financial statements can satisfy market participants' needs for fiduciary income, expense, and loss data. Finally, this commenter stated that market participants may be confused or misled by the fiduciary expense and loss information because they would be unable to determine the source or specific fiduciary activity giving rise to the expense or loss.

Although the fiduciary income, expense, and loss data currently reported in Schedule RC–T and afforded confidential treatment apply only to a portion of an institution rather than an entire institution, all other income and expense data collected in the Call Report is publicly available, even when the data relates only to portions of an institution's activities. As previously mentioned, components of net income attributable to foreign offices are reported by banks with significant foreign activities and made publicly available. In addition, banks with significant trading activities have reported a publicly available year-to-date breakdown of the revenues generated by the trading portion of their activities, which discloses the net gains (losses) by type of exposure each quarter. The agencies believe that the likelihood that competing institutions will be able to deduce an individual institution's fee schedule for its fiduciary services from the fiduciary income data reported in Schedule RC–T is largely mitigated by the fact that, in general, as noted above, only larger trust institutions are required to report fiduciary income, expense, and loss data.[12] Smaller trust institutions are not required to report such data. Therefore, smaller trust institutions whose fee schedules for fiduciary services may potentially be more likely to be able to be deduced by competitors are not subject to the risk of unintended disclosure of their fee schedules.

The agencies also believe that the risk of misinterpretation of the fiduciary income, expense, and loss data is substantially reduced by the FFIEC's publication of detailed instructions for the preparation of Schedule RC–T, which are available to users of this schedule to assist them in understanding the scope of the reported fiduciary and related services data. Moreover, possible confusion about the source of losses is mitigated by the currently required reporting in Memorandum item 4 of Schedule RC–T of a breakdown of losses by type of fiduciary account, which is further segregated between managed and non-managed accounts. Finally, the Optional Narrative Statement section of the Call Report affords the management of trust institutions the ability to submit publicly available explanatory comments concerning their fiduciary income, expense, and losses.

Thus, the agencies continue to believe that the benefit of increased transparency from the full disclosure of fiduciary income, expense, and loss data will improve market discipline by enhancing the market's ability to assess institution-specific performance and risks. After carefully considering the comments on the public availability of fiduciary income, expense, and loss data reported in Schedule RC–T, the agencies are adopting the proposal to eliminate the confidential treatment of such data beginning with the data reported as of March 31, 2009.

III. Call Report Revisions Proposed for June 2009

The agencies received no comments on the following revisions that were proposed to take effect as of June 30, 2009, and therefore these revisions will be implemented as proposed:

- Holdings of collateralized debt obligations and other structured financial products by type of product and underlying collateral;
- Holdings of commercial mortgage-backed securities;
- Unused commitments with an original maturity of one year or less to

[12] Institutions with total fiduciary assets greater than $100 million as of the preceding December 31 and institutions with gross fiduciary and related services income greater than 10 percent of revenue for the preceding calendar year are required to report fiduciary income data quarterly or annually, depending on their assets and income, and fiduciary expense and loss data annually in Schedule RC–T.

asset-backed commercial paper conduits;

• Pledged loans and pledged trading assets;

• Collateral held against over-the-counter (OTC) derivative exposures by type of collateral and type of counterparty as well as the current credit exposure on OTC derivatives by type of counterparty (for banks with $10 billion or more in total assets);

• Investments in real estate ventures;

• Held-to-maturity and available-for-sale securities in domestic offices (for banks that have both domestic and foreign offices); and

• Whether the bank is a trustee or custodian for certain types of accounts or provides certain services in connection with orders for securities transactions regardless of whether the bank exercises trust powers, which will take the form of yes/no questions.

The agencies received one or more comments addressing each of the following proposed June 30, 2009, revisions:

• Real estate construction and development loans outstanding with capitalized interest and the amount of such interest included in income for the quarter (for banks with construction and development loan concentrations);

• Fair value measurements by level for asset and liability categories reported at fair value on a recurring basis (for banks that have $500 million or more in total assets, apply a fair value option, or are required to complete the Call Report trading schedule);

• Remaining maturities of unsecured other borrowings and subordinated notes and debentures;

• Past due and nonaccrual trading assets; and

• Credit derivatives by credit quality and remaining maturity and by regulatory capital treatment.

The comments related to each of these proposed revisions are discussed below along with the agencies' response to these comments.

A. Construction and Development Loans With Interest Reserves

In December 2006, the agencies issued final guidance on commercial real estate (CRE) loans, including construction, land development, and other land (C&D) loans, entitled *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (CRE Guidance).[13] This guidance was developed to reinforce sound risk management practices for institutions with high and increasing concentrations of commercial real estate loans on their balance sheets. It provides a framework for assessing CRE concentrations; risk management, including board and management oversight, portfolio management, management information systems, market analysis and stress testing, underwriting and credit risk review; and supervisory oversight, including CRE concentration management and an assessment of capital adequacy.

In issuing the CRE Guidance, the agencies noted that CRE concentrations had been rising over the past several years and had reached levels that could create safety and soundness concerns in the event of a significant economic downturn. As a consequence, the CRE Guidance explains that, as part of their ongoing supervisory monitoring processes, the agencies would use certain criteria to identify institutions that are potentially exposed to significant CRE concentration risk. Thus, the CRE Guidance states in part that an institution whose total reported C&D loans is approaching or exceeds 100 percent or more of the institution's total risk-based capital may be identified for further supervisory analysis of the level and nature of its CRE concentration risk. As of March 31, 2008, approximately 28 percent of all banks held C&D loans in excess of 100 percent of their total risk-based capital.

A practice that is common in C&D lending is the establishment of an interest reserve as part of the original underwriting of a C&D loan. The interest reserve account allows the lender to periodically advance loan funds to pay interest charges on the outstanding balance of the loan. The interest is capitalized and added to the loan balance. Frequently, C&D loan budgets will include an interest reserve to carry the project from origination to completion and may cover the project's anticipated sell-out or lease-up period. Although potentially beneficial to the lender and the borrower, the use of interest reserves carries certain risks. Of particular concern is the possibility that an interest reserve could disguise problems with a borrower's willingness and ability to repay the debt consistent with the terms and conditions of the loan agreement. For example, a C&D loan for a project on which construction ceases before it has been completed or is not completed in a timely manner may appear to be performing if the continued capitalization of interest through the use of an interest reserve keeps the troubled loan current. This practice can erode collateral protection and mask loans that should otherwise be reported as delinquent or in nonaccrual status.

Since the CRE Guidance was issued, market conditions have weakened, most notably in the C&D sector. As this weakening has occurred, the agencies' examiners have been encountering C&D loans on projects that are troubled, but where interest has been capitalized inappropriately, resulting in overstated income and understated volumes of past due and nonaccrual C&D loans. Therefore, to assist the agencies in monitoring C&D lending activities at those banks with a concentration of such loans, i.e., C&D loans (in domestic offices) that exceeded 100 percent of total risk-based capital as of the previous calendar year-end, the agencies proposed to add two new Call Report items. First, banks with such a concentration would report the amount of C&D loans (in domestic offices) included in the Call Report loan schedule (Schedule RC–C) on which the use of interest reserves is provided for in the loan agreement. Second, these banks would report the amount of capitalized interest included in the interest and fee income on loans during the quarter. These data, together with information that banks currently report on the amount of past due and nonaccrual C&D loans, will assist in identifying banks with C&D loan concentrations that may be engaging in questionable interest capitalization practices for supervisory follow-up.

One bank expressed agreement with the agencies' concerns about the disguising of problems with a borrower's willingness and ability to repay the debt consistent with the terms and conditions of the loan agreement through the improper use of interest reserves on C&D loans. The bank also acknowledged that real estate market conditions have weakened in its market area since the agencies issued their CRE Guidance in December 2006. Although the bank stated that it has a concentration of C&D loans, as defined above, it reported that a recent review of its portfolio revealed that only a modest number of its C&D loan agreements included interest reserves. The bank also described its lending policies and controls over the approval of interest reserves in the original underwriting of a C&D loan and in the limited cases when the original loan had matured or was otherwise recast. It then stated that both the bank lender and its supervisory agency should focus their attention—and any regulatory reporting requirements—on situations when interest reserves are added to a loan after a development project is completed or ''when a project goes over budget or otherwise has completion

[13] 71 FR 74580, December 12, 2006.

issues.'' With respect to the two proposed items pertaining to C&D loans with interest reserves, the bank noted that its loan system does not currently capture the required data and adding this capability to the loan system by the proposed June 30, 2009, effective date would likely be difficult, which would mean that the data would have to be compiled manually until system changes are in place.

In its comments, the bank concurred with the agencies' statement that the practice of including interest reserves as part of the original underwriting of a C&D loan is common. Although this bank may have a modest number of C&D loans with interest reserves and states that it controls the use of such reserves, the agencies remain concerned about the inappropriate capitalization of interest on C&D loans through the use of interest reserves. Potentially inappropriate interest capitalization is not limited to situations where interest reserves are added to a C&D loan after its originally scheduled maturity date or in connection with a restructuring of the loan. Inappropriate interest income recognition may also occur when budgeted interest reserves that were determined to be appropriate at the inception of the loan based on a project's original development and sale or lease-up plans continue to be used after construction has been substantially curtailed or has ceased and collection of all principal and interest on the loan is in doubt. In addition, a bank may loosen its policies and controls over the recognition of interest income on C&D loans through the use of interest reserves.

The agencies acknowledge that at some banks with C&D loan concentrations, only a limited portion of such loans may provide for the use of interest reserves. Nevertheless, the agencies believe that all banks with such concentrations should report the proposed data on loans with interest reserves to enable them to monitor this lending activity and detect changes in the extent to which such banks' C&D loans provide for the use of interest reserves. As noted above, the new and existing C&D loan data will also assist in identifying banks whose use of interest reserves may warrant supervisory follow-up. Accordingly, after considering the bank's comment, the agencies have decided to implement the proposed new items for the amount of C&D loans with interest reserves and the amount of capitalized interest included in income for the quarter as of June 30, 2009, as proposed. Banks with C&D loan concentrations are reminded that they are permitted to report reasonable estimates for these two amounts in the June 30, 2009, Call Report, which will provide them with additional flexibility in making any necessary systems changes. Finally, banks with C&D loan concentrations may choose to provide explanatory comments about their C&D loans with interest reserves in the Optional Narrative Statement section of the Call Report and these comments will be publicly available.

B. Fair Value Measurements

Effective March 31, 2007, the banking agencies began collecting information on certain assets and liabilities measured at fair value on Call Report Schedule RC–Q, Financial Assets and Liabilities Measured at Fair Value. Currently, this schedule is completed by banks with a significant level of trading activity or that use a fair value option. The information collected on Schedule RC–Q is intended to be consistent with the fair value disclosures and other requirements in FASB Statement No. 157, *Fair Value Measurements* (FAS 157).

Based on the banking agencies' ongoing review of industry reporting and disclosure practices since the inception of this standard, and the reporting of items at fair value on Schedule RC, Balance Sheet, the agencies proposed to expand the data collected on Schedule RC–Q in two material respects.

- First, the agencies proposed to expand the detail on Schedule RC–Q to (1) collect fair value information on all assets and liabilities reported at fair value on a recurring basis in a manner consistent with the asset and liability breakdowns on Schedule RC, (2) add totals to capture total assets and total liabilities for items reported on the schedule, (3) modify the existing items for ''other financial assets and servicing assets'' and ''other financial liabilities and servicing liabilities'' to collect information on ''other assets'' and ''other liabilities'' reported at fair value on a recurring basis (including nontrading derivatives and loan commitments), and (4) add separate disclosures for those components of ''other assets'' and ''other liabilities'' greater than $25,000 and exceeding 25 percent of the total fair value of ''other assets'' and ''other liabilities,'' respectively.
- Second, the agencies proposed to extend the requirement to complete Schedule RC–Q to all banks that reported $500 million or more in total assets at the beginning of their fiscal year while retaining the schedule's current applicability to all banks that (1) have elected to account for financial instruments or servicing assets and liabilities at fair value under a fair value option or (2) are required to complete Schedule RC–D, Trading Assets and Liabilities.

One bankers' organization commented that ''[c]ommunity banks have long been concerned about the application of fair value accounting to their financial statements'' and urged the agencies to use the increased data to be collected in Schedule RC–Q ''to carefully study the impact of this controversial accounting methodology'' because it ''often does not reflect the reality of community banking.'' In proposing the revisions to Schedule RC–Q, the agencies stated that additional data will enable them to more accurately assess the impact of fair value accounting and fair value measurements for safety and soundness purposes. This objective is consistent with the recommendation from this bankers' organization concerning the manner in which the agencies should use these fair value data. Thus, the agencies will implement the revisions to Schedule RC–Q effective June 30, 2009, as proposed.

C. Maturity Distributions of Unsecured Other Borrowings and Subordinated Debt

As part of the Omnibus Budget Reconciliation Act of 1993, Congress enacted depositor preference legislation that elevated the claims of depositors in domestic offices (and in insured branches in Puerto Rico and U.S. territories and possessions) over the claims of general unsecured creditors in a bank failure. When a bank fails, the claims of general unsecured creditors provide a cushion that lowers the cost of the failure to the Deposit Insurance Fund (DIF) administered by the FDIC. The greater the amount of general unsecured creditor claims, the greater the cushion and the lower the cost of the failure to the DIF.

At the time the agencies issued their proposed revisions to the Call Report in 2008, the FDIC was considering proposing 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. The FDIC has since issued proposed amendments to its risk-based assessment system that include an unsecured debt adjustment that would lower an institution's base assessment rate.[14]

Because the Call Reports lack information regarding the remaining

[14] 73 FR 61560, October 16, 2008.

maturities of unsecured ''other borrowings'' and subordinated notes and debentures, the agencies proposed to collect this information in the Call Report so that the FDIC would be able to implement an unsecured debt adjustment. One bankers' organization expressed support for the proposed collection of this information to facilitate this risk-based assessment adjustment, indicating that the reporting of this additional data ''would be reasonable and would not be unduly burdensome.'' The agencies will implement the new items for reporting data on the remaining maturities of unsecured other borrowings and subordinated debt beginning June 30, 2009, as proposed.

D. Trading Assets That Are Past Due or in Nonaccrual Status

Currently, the agencies do not distinguish past due and nonaccrual trading assets from other assets on Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. The agencies proposed to replace Schedule RC–N, item 9, for ''Debt securities and other assets'' that are past due 30 days or more or in nonaccrual status with two separate items: item 9.a, ''Trading assets,'' and item 9.b, ''All other assets (including available-for-sale and held-to-maturity securities).'' These items would follow the existing three-column breakdown on Schedule RC–N that banks utilize to report assets past due 30 through 89 days and still accruing, past due 90 days or more and still accruing, and in nonaccrual status. Item 9.a would include all assets held for trading purposes, including loans held for trading. Collection of this information would allow the agencies to better assess the quality of assets held for trading purposes, and generally enhance surveillance and examination planning efforts.

The agencies also proposed to expand the scope of Schedule RC–D, Trading Assets, Memorandum item 3, ''Loans measured at fair value that are past due 90 days or more,'' to include loans held for trading and measured at fair value that are in nonaccrual status. This change was intended to provide for more consistent treatment with the information that would be collected on Schedule RC–N and with the disclosure requirements in FASB Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*.

One bankers' organization stated that it believed that disclosure requirements regarding the delinquency and nonaccrual status of trading securities is not particularly meaningful given that these securities are marked to market through earnings. As a consequence, credit risk is already incorporated into the market price of each trading security. The organization further stated that the nonaccrual concept traditionally has not been applied to trading securities, which makes the proposed reporting of such data costly and difficult to implement. Accordingly, this commenter recommended against adding the proposed disclosure requirements regarding the delinquency and nonaccrual status of trading securities.

The agencies are continuing to evaluate this commenter's recommendation. Therefore, the agencies will not implement the revisions to Schedule RC–N, item 9, and Schedule RC–D, Memorandum item 3, effective June 30, 2009, as had been proposed. These items will remain in their current form while the agencies consider the proposed reporting changes in light of this banking organization's comment. When the agencies conclude their deliberations on these proposed disclosure requirements and determine whether and how to proceed with them, they will publish their conclusions in a separate **Federal Register** notice and submit them to OMB for review and approval. If Schedule RC–N, item 9, and Schedule RC–D, Memorandum item 3, are revised, these reporting changes would take effect no earlier than December 31, 2009.

E. Enhanced Information on Credit Derivatives

Effective for the March 2006 Call Report, the agencies revised the information collected on credit derivatives in Schedules RC–L, Derivatives and Off-Balance Sheet Items, and RC–R, Regulatory Capital, to gain a better understanding of the nature and trends of banks' credit derivative activities. Since that time, the volume of credit derivative activity in the banking industry, as measured by the notional amount of these contracts, increased steadily through March 31, 2008, rising to an aggregate notional amount of $16.4 trillion as of that date. The aggregate notional amount has since declined slightly. Call Report data further indicate that the credit derivative activity in the industry is highly concentrated in banks with total assets in excess of $10 billion. For these banks, credit derivatives function as a risk mitigation tool for credit exposures in their operations as well as a financial product that is sold to third parties for risk management and other purposes.

The agencies' safety and soundness efforts continue to place emphasis on understanding and assessing the role of credit derivatives in bank risk management practices. In addition, the agencies' monitoring of credit derivative activities at certain banks has identified differences in interpretation as to how credit derivatives are treated under the agencies' risk-based capital standards. To further the agencies' safety and soundness efforts concerning credit derivatives and to improve transparency in the treatment of credit derivatives for regulatory capital purposes, the agencies proposed to revise the information pertaining to credit derivatives that is collected on Schedules RC–L, RC–N (Past Due and Nonaccrual Loans, Leases, and Other Assets), and RC–R.

In Schedule RC–L, item 7, ''Credit derivatives,'' the agencies proposed to change the caption of column A from ''Guarantor'' to ''Sold Protection'' and the caption of column B from ''Beneficiary'' to ''Purchased Protection'' to eliminate confusion surrounding the meaning of ''Guarantor'' and ''Beneficiary'' that commonly occurs between the users and preparers of these data. The agencies also proposed to add a new item 7.c to Schedule RC–L to collect information on the notional amount of credit derivatives by regulatory capital treatment. For credit derivatives that are subject to the agencies' market risk capital standards, the agencies proposed to collect the notional amount of sold protection and the amount of purchased protection. For all other credit derivatives, the agencies proposed to collect the notional amount of sold protection, the notional amount of purchased protection that is recognized as a guarantee under the risk-based capital guidelines, and the notional amount of purchased protection that is not recognized as a guarantee under the risk-based capital standards.

The agencies also proposed to add a new item 7.d to Schedule RC–L to collect information on the notional amount of credit derivatives by credit rating and remaining maturity. The item would collect the notional amount of sold protection broken down by credit ratings of investment grade and subinvestment grade for the underlying reference asset and by remaining maturities of one year or less, over one year through five years, and over five years. The same information would be collected for purchased protection.

In Schedule RC–N, the agencies proposed to change the scope of Memorandum item 6, ''Past due interest rate, foreign exchange rate, and other commodity and equity contracts,'' to

include credit derivatives. The fair value of credit derivatives where the bank has purchased protection increased significantly to over $500 billion at March 31, 2008, as compared to a negative $10 billion at March 31, 2007. Thus, the performance of credit derivative counterparties has increased in importance. The expanded scope of Memorandum item 6 on Schedule RC–N would include the fair value of credit derivatives carried as assets that are past due 30 through 89 days and past due 90 days or more.

In Schedule RC–R, the agencies proposed to change the scope of the information collected in Memorandum items 2.g.(1) and (2) on the notional principal amounts of ''Credit derivative contracts'' that are subject to risk-based capital requirements to include only (a) the notional principal amount of purchased protection that is defined as a covered position under the market risk capital guidelines and (b) the notional principal amount of purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The scope of Memorandum item 1, ''Current credit exposure across all derivative contracts covered by the risk-based capital standards,'' would be similarly revised to include the current credit exposure arising from credit derivative contracts that represent (a) purchased protection that is defined as a covered position under the market risk capital guidelines and (b) purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The agencies also proposed to add new Memorandum items 3.a and 3.b to Schedule RC–R to collect the present value of unpaid premiums on sold credit protection that is defined as a covered position under the market risk capital guidelines. Consistent with the information currently reported in Memorandum item 2.g, the agencies proposed to collect this present value information with a breakdown between investment grade and subinvestment grade for the rating of the underlying reference asset and with the same three remaining maturity breakouts.

No comments were received on any of the agencies' proposed reporting revisions pertaining to credit derivatives described above, except for a comment from a bankers' organization on the proposal to collect data on Schedule RC–R relating to the present value of unpaid premiums on sold credit protection that is defined as a covered position under the market risk capital guidelines. Accordingly, the agencies will implement all of the proposed credit derivative reporting changes—other than the proposed new Schedule RC–R items for present value data—as of June 30, 2009, as proposed. With respect to the present value data, the bankers' organization requested that the agencies clarify the impact of this proposed reporting requirement on a bank's risk-based capital calculations. The agencies are continuing to consider this comment and the proposed collection of present value data for certain credit derivatives. Therefore, the agencies will not add Memorandum items 3.a and 3.b to Schedule RC–R to collect this present value information effective June 30, 2009, as had been proposed. When the agencies conclude their deliberations on the bankers' organization's comment and the proposed present value data items, they will publish their conclusions in a separate **Federal Register** notice and submit any new reporting requirements to OMB for review and approval. If Memorandum items 3.a and 3.b are added to Schedule RC–R, this new reporting requirement would take effect no earlier than December 31, 2009.

IV. Discussion of Revisions Proposed for December 2009

Schedule RC–T, Fiduciary and Related Services, collects data on:

- Fiduciary and related assets by type of fiduciary account, with the amount of assets and number of accounts reported separately for managed and non-managed accounts;
- Fiduciary and related services income by type of fiduciary account and expenses, including fiduciary settlements, surcharges, and other losses by type of fiduciary account;
- Managed assets held in personal trust and agency accounts by type of asset;
- Corporate trust and agency accounts; and
- The number of collective investment funds and common trust funds and the market value of fund assets by type of fund.

FDIC-insured banks that exercise fiduciary powers and have fiduciary assets or accounts and uninsured limited-purpose national trust banks (trust institutions) must complete specified sections of Schedule RC–T either quarterly or annually (as of December 31) depending on the amount of their total fiduciary assets as of the preceding calendar year-end and their gross fiduciary and related services income for the preceding calendar year. Since its addition to the Call Report at year-end 2001, Schedule RC–T has not been revised. During this time period, significant growth has occurred in both the assets in managed and non-managed fiduciary accounts at trust institutions. The agencies have monitored the growth in fiduciary activities and trends in this area, both from data collected in Schedule RC–T and through the examination process, and have determined that certain data should be added to Schedule RC–T to enable the agencies to better evaluate the trust activities of individual trust institutions and the industry as a whole. Accordingly, the agencies proposed to implement revisions to Schedule RC–T as of December 31, 2009, that would affect the types of fiduciary accounts for which fiduciary assets and income are reported and the types of assets and fiduciary accounts for which managed assets are reported. The agencies also proposed to collect data on debt issues in default under corporate trusteeships.

One bankers' organization submitted comments on the proposed changes to Schedule RC–T. This commenter requested that the effective date for the proposed changes to Schedule RC–T be extended from December 31, 2009, to December 31, 2010, in order to provide vendors whose systems track the data reported in this schedule additional time for system programming revisions. The bankers' organization indicated that vendors are currently devoting programming resources to changes necessitated by the joint Securities and Exchange Commission and Federal Reserve Board Regulation R—Exceptions for Banks from the Definition of Broker in the Securities Exchange Act of 1934. This commenter also stated that some banks use multiple systems to track the default status of debt issues under corporate trusteeships and that moving to a single system of record for tracking these debt issues would impose significant costs and require a longer implementation period than proposed.

After carefully considering this organization's comment, the agencies have decided to retain the December 31, 2009, effective date for the proposed changes. The agencies are not requiring that trust institutions change from their use of multiple systems for corporate trusteeships or that they develop a single system of record for such trusteeships. In addition, the agencies note that banks are to start complying with Regulation R beginning the first day of their fiscal year commencing after September 30, 2008 (i.e., January 1, 2009, for most institutions), which implies that programming changes should be complete or nearing completion. Furthermore, as previously stated, the agencies' policy is to permit

banks to provide reasonable estimates for any new or revised Call Report item as of the report date for which the new or revised item is initially required to be reported. The ability to report reasonable estimates applies to the Schedule RC–T revisions that will be implemented as of December 31, 2009, which will afford trust institutions and their vendors additional time—either one quarter or one year, depending on the item and the frequency with which a particular institution must submit Schedule RC–T—to complete any necessary systems changes.

The agencies received no comments on the following revisions to Schedule RC–T that were proposed to take effect as of December 31, 2009, and therefore these revisions will be implemented as proposed:

- Breaking out foundations and endowments as well as investment advisory agency accounts as separate types of fiduciary accounts in the schedule's sections for reporting fiduciary and related assets and income;
- Expanding the breakdown of managed assets by type of asset to cover all types of fiduciary accounts; and
- Adding items for the market value of discretionary investments in proprietary mutual funds and the number of managed accounts holding such investments.

The agencies received comments from one bankers' organization addressing each of the following other proposed revisions to Schedule RC–T:

- Adding items for Individual Retirement Accounts (IRAs), Health Savings Accounts (HSAs), and similar accounts included in fiduciary and related assets;
- Revising the manner in which discretionary investments in common trust funds and collective investment funds are reported in the breakdown of managed assets by type of asset and adding new asset types to this breakdown of managed assets; and
- Adding items for the number and principal amount outstanding of debt issues in substantive default for which the institution serves as indenture trustee.

The comments related to each of these proposed revisions are discussed below along with the agencies' response to these comments.

A. IRAs, HSAs, and Other Similar Accounts

IRAs, HSAs, and other similar accounts represent a large category of individual benefit and retirement-related accounts administered by trust institutions for which the agencies do not collect specific data. At present, data for retirement-related accounts is included in the totals reported for ''Other retirement accounts'' and ''Custody and safekeeping accounts'' in the Fiduciary and Related Assets section of Schedule RC–T (items 5.c and 10). Significant growth in IRAs and HSAs administered by trust institutions is expected. IRAs, HSAs, and other similar accounts for individuals have risk characteristics that differ from employee benefit plans covered by the Employee Retirement Income Security Act. To identify trust institutions experiencing significant changes in the number of and market value of assets in these types of accounts for supervisory follow-up and to monitor both aggregate and individual trust institution growth trends involving these accounts, the agencies proposed to add a new item 13 to the Fiduciary and Related Assets section of Schedule RC–T to capture data on IRAs, HSAs, and other similar accounts included in recaptioned item 5.c, ''Other employee benefit and other retirement-related accounts'' and renumbered item 11, ''Custody and safekeeping accounts.''

In its comment on this change, the bankers' organization recommended that the data proposed to be reported in new item 13, ''Individual Retirement Accounts, Health Savings Accounts, and other similar accounts,'' should be reported instead in a new separate subitem of recaptioned item 5, ''Employee benefit and retirement-related trust and agency accounts,'' in the Fiduciary and Related Assets section of Schedule RC–T. In addition, the commenter requested clarification of how IRA, HSA, and other similar accounts held outside the trust department and in the retail side of an institution should be reported in Schedule RC–T, recommending that these accounts be excluded from Schedule RC–T.

At present, IRAs, HSAs, and similar accounts that are solely custody and safekeeping accounts are reported in existing item 10, ''Custody and safekeeping accounts.'' Custody and safekeeping accounts are not considered fiduciary accounts per se and are excluded from ''Total fiduciary accounts'' reported in item 9 of Schedule RC–T. For this reason, the agencies do not believe that IRAs, HSAs, and similar accounts should be aggregated and reported in a new subitem of item 5, ''Employee benefit and retirement-related trust and agency accounts,'' which is reserved for fiduciary accounts. Therefore, the agencies are implementing new item 13, ''Individual Retirement Accounts, Health Savings Accounts, and other similar accounts,'' as proposed.

Regarding the reporting of IRAs, HSAs, and other similar accounts maintained outside the trust department and in the retail side of the institution, the agencies reiterate that only those activities offered through a fiduciary business unit should be reported in Schedule RC–T. Therefore, IRAs, HSAs, and other similar accounts not offered through a fiduciary business unit of an institution should not be reported in Schedule RC–T.

B. Changes to the Types of Assets Reported in the Breakdown of Managed Assets Held in Fiduciary Accounts by Asset Type

The agencies reviewed the types of managed assets for which trust institutions currently report a breakdown of such assets by market value in Memorandum item 1 of Schedule RC–T. In this regard, discretionary investments in common trust funds (CTFs) and collective investment funds (CIFs) are not separately reported at present in Memorandum item 1. Instead, trust institutions currently are required to allocate the underlying assets of each CTF and CIF attributable to managed accounts to the individual line items for the various types of assets reported in Memorandum item 1. The agencies have found this current method of reporting investments in CTFs and CIFs to be misleading, confusing, and burdensome for trust institutions. It requires institutions to segregate the underlying assets of each CTF and CIF by asset type, rather than following the more straightforward approach of reporting the total value of managed accounts' holdings of investments in CTFs and CIFs. Therefore, the agencies proposed to end the current method of reporting these investments in Memorandum item 1 by adding a new Memorandum item 1.h for investments in CTFs and CIFs. This new asset type would enable the agencies to collect data that actually reflects the investment choices of discretionary fiduciaries, i.e., investing in a fund rather than an individual asset, while simplifying the reporting of these investments.

In its comment on this proposed change, the bankers' organization asked whether both the accounts holding units in CTFs and CIFs and the CTFs and CIFs themselves should be reported in the Fiduciary and Related Assets section of Schedule RC–T and whether double counting of CTF and CIF units and CTFs and CIFs will result. The agencies note that only the value of units in CTFs and CIFs held in fiduciary accounts should

be reported in the Fiduciary and Related Assets section of RC–T. When such units are held by a managed fiduciary account, the value of the units will be reported in new Memorandum item 1.h. Look-through reporting of the underlying assets of CTFs and CIFs in Memorandum item 1 is being eliminated. Double counting of CTF and CIF assets will be avoided by limiting the reporting of the underlying assets of CTFs and CIFs to existing Memorandum item 3, ''Collective investment funds and common trust funds,'' in Schedule RC–T.

At present, the asset type for ''common and preferred stocks'' in Memorandum item 1 includes not only these stocks, but also all investments in mutual funds (other than money market mutual funds, which are reported separately), private equity investments, and investments in unregistered and hedge funds. Investments in mutual funds (other than money market mutual funds) have long been reported with common and preferred stocks. However, over time, these investments have gone from being a relatively minor investment option for managed fiduciary accounts to being one of the most significant asset types for managed fiduciary accounts.

As a consequence, the agencies lack specific data on discretionary investments in mutual funds (other than money market mutual funds) despite their distinctive differences from investments in individual common stocks. Given these differences and the growth in mutual fund holdings in managed fiduciary accounts, the agencies proposed to add two new subitems to Memorandum item 1 to collect data on investments in equity mutual funds and in other (non-money market) mutual funds separately from common and preferred stocks. None of the comments the agencies received specifically addressed the proposed new subitems for mutual funds in Memorandum item 1, which the agencies will implement as proposed.

Investments in hedge funds and private equity have grown rapidly since the implementation of Schedule RC–T in 2001, with large institutional investors, e.g., large pension plans, increasing their allocation to these types of investments in order to increase portfolio returns and pursue absolute return strategies. As mentioned above, these types of investments are currently reported as ''common and preferred stocks'' in Memorandum item 1. However, given their unique characteristics and risks, the increasing role such investments are having in managed fiduciary portfolios, and the agencies' need to monitor the volume of these investments across the trust industry and at individual trust institutions, the agencies also proposed to modify Memorandum item 1 by adding a new subitem in which trust institutions would report investments in unregistered funds and private equity held in managed accounts. As proposed, these investments first would have been reported in the subitem for investments in common and preferred stocks, which is a component of Memorandum item 1.o, ''Total managed assets held in fiduciary accounts,'' but then these investments would have been separately disclosed in new Memorandum item 1.p of Schedule RC–T.

In its comment letter, the bankers' organization suggested that investments in unregistered funds and private equity and investments in common and preferred stocks be reported as separate components of ''Total managed assets held in fiduciary accounts,'' which would eliminate the need for the former type of investments to be included in two subitems of Memorandum item 1 of Schedule RC–T. The agencies agree with this suggestion and are revising Memorandum item 1 to exclude investments in unregistered funds and private equity from the subitem for investments in common and preferred stocks. Instead, each type of investment will be reported as a separate component of ''Total managed assets held in fiduciary accounts,'' with the subitems within Memorandum item 1 renumbered accordingly.

The bankers' organization also requested that the agencies clarify the definition of ''private equity investments'' for purposes of reporting such investments within Memorandum item 1 of Schedule RC–T and explain whether investments in closely-held family businesses should be reported as ''private equity investments.'' In general, for the purposes of Memorandum item 1, private equity investments is an asset class consisting of purchased equity securities in operating companies that are not publicly traded on a stock exchange or otherwise registered with the SEC under federal securities laws. Investments in closely-held family businesses, however, would not be reported as ''private equity investments'' if such investments represented in-kind transfers to a fiduciary account of securities in a closely-held family business or an increase in a fiduciary account's percentage ownership of an existing closely-held family business whose securities are held in the account. Such investments in closely-held family businesses would be reported in the subitem for miscellaneous assets within Memorandum item 1 of Schedule RC–T.

C. Corporate Trust and Agency Accounts

Trust institutions currently report the number of corporate and municipal debt issues for which the institution serves as trustee and the outstanding principal amount of these debt issues in Memorandum item 2.a of Schedule RC–T. One of the major risks in the area of corporate trust administration involves debt issues that are in substantive default. A substantive default occurs when the issuer fails to make a required payment of interest or principal, defaults on a required payment into a sinking fund, files for bankruptcy, or is declared bankrupt or insolvent.

The occurrence of a substantive default significantly raises the risk profile for an indenture trustee of a defaulted issue. Thus, to monitor and better understand the risk profile of trust institutions serving as an indenture trustee for debt securities and changes therein, the agencies proposed to require trust institutions to report the number of such issues that are in substantive default and the principal amount outstanding for these issues.

In its comment letter, the bankers' organization suggested clarifications to the scope of the proposed new reporting requirements for debt securities in substantive default for which an institution is serving as indenture trustee. The commenter recommended that the term ''substantive default'' should mean that an event of default for an issue of securities has actually been declared by the trustee with notice to investors. In addition, the bankers' organization recommended that events of default should include both technical and payment defaults. This commenter also proposed that issues in a cure period should not be reported as being in substantive default, and, in the case of private placement leases, no substantive default should be reported when the trustee is required to delay or waive the declaration of an event of default unless requested to do so in writing and no such request has been made. The commenter further suggested that, once the trustee's duty with respect to a defaulted issue is completed, the issue no longer should be reported as defaulted. Finally, the commenter requested that the agencies confirm that ''amount outstanding'' means the unpaid principal balance or certificate balance.

After carefully considering these recommendations, the agencies agree that issues should not be reported as

being in substantive default until such default has been declared by the trustee. Similarly, issues should not be reported as being in substantive default during a cure period, provided the bond indenture provides for a cure period. Private placement leases where the trustee is required to delay or waive the declaration of an event of default, unless requested in writing to make such declaration, should not be reported as being in substantive default, provided such written request has not been made. Once a trustee's duties with respect to an issue in substantive default have been completed, the issue should no longer be reported as being in default. As for the meaning of the term ''amount outstanding,'' the instructions for Memorandum item 2 of Schedule RC–T currently refer to the par value of outstanding debt securities, except for zero-coupon bonds for which ''amount outstanding'' is described as the maturity amount. As suggested by the commenter, the instructions for Memorandum item 2 will be revised to clarify that ''amount outstanding'' for debt instruments means the unpaid principal balance. For trust preferred securities, the ''amount outstanding'' would be the redemption price.

The agencies, however, have decided not to treat events of technical default as falling within the scope of the proposed new Memorandum item 2.a.(1) on debt issues in default for which the institution serves as trustee. As previously stated, the agencies believe that a substantive default significantly raises the risk profile for an indenture trustee of a defaulted issue. In such cases, every action or failure to act by the trustee is intensely scrutinized by bondholders of the defaulted issue. Moreover, an event of substantive default often results in the incurrence of significant expense and the distraction of managerial time. For these reasons, the agencies proposed to collect data on substantive defaults on issues for which the reporting trust institution serves as trustee under a bond indenture. The agencies do not believe that events of technical default necessarily entail the heightened degree of risk that substantive defaults do. Therefore, the agencies do not consider it necessary to monitor such events on a system-wide basis. The agencies will continue to monitor the occurrence of events of technical default and an institution's administration of such events during periodic on-site examinations.

In addition, the agencies proposed to revise the instructions for reporting on corporate trust accounts to state that issues of trust preferred stock for which the institution is trustee should be included in the amounts reported for corporate and municipal trusteeships. No comments were received on this aspect of the corporate trust reporting proposal and the agencies will implement this instructional change as proposed.

F. Instructional Clarifications

The agencies proposed to clarify the instructions for reporting:

- The managed and non-managed assets and number of managed and non-managed accounts for defined contribution plans and defined benefit plans in items 5.a and 5.b of Schedule RC–T, respectively, by indicating that employee benefit accounts for which the trust institution serves as a directed trustee should be reported as non-managed accounts; and
- The number of, and market value of assets held in, collective investment funds and common trust funds in Memorandum item 3 by stating that the number of funds should be reported, not the number of assets held by these funds, the number of participants, or the number of accounts invested in the funds.

No comments were received on these proposed instructional clarifications, which will be implemented as proposed.

However, the bankers' organization requested clarification of the term ''managed assets'' as used in Schedule RC–T. The organization asked whether discretionary accounts in which the management of all or a portion of the account is delegated to a registered investment advisor, whether affiliated or unaffiliated with the reporting trust institution, should be considered managed or non-managed assets. The organization also sought clarification as to whether non-discretionary accounts that are managed by a registered investment advisor would be reported as custody or non-managed accounts.

The current instructions for Schedule RC–T state that an account is considered managed if the institution has investment discretion over the assets of the account. Investment discretion is defined as the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of a fiduciary related account. An institution that delegates its authority over investments and an institution that receives delegated authority over investments are both deemed to have investment discretion. Therefore, whether an account where investment discretion has been delegated to a registered investment adviser, whether affiliated or unaffiliated with the reporting institution, should be reported as a managed account depends on whether the delegation of investment authority to the registered investment adviser was made pursuant to the exercise of investment discretion by the reporting institution. If so, the account is deemed to be a managed account by the reporting institution. Otherwise, the account would be a non-managed account for purposes of Schedule RC–T.

V. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: January 22, 2009.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, January 22, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 22nd day of January, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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