Federal Bank Regulatory Agencies Hone in on Loans to Nondepository Financial Institutions

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PRACTICES Financial Regulatory, Finance, Fund Finance

On December 27, 2023, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (collectively, the "***agencies***") proposed a regulatory reporting change, which, if finalized, will affect the way banks report their credit exposures to nondepository financial institutions ("***NDFIs***") and others.

The Consolidated Reports of Condition and Income ("***Call Report***") is required of banks on a quarterly basis. The Call Report is a publicly available document that provides the agencies with a view of such banks' financial condition. The agencies have proposed to update the Call Report forms and instructions to increase the granularity in reporting exposure to NDFIs. These proposed revisions aim to enhance the understanding of NDFI exposure, risks, and performance trends. The revisions would group together loan exposures that exhibit similar underlying risk characteristics. In addition, the proposed reporting change aims to allow for more accurate analysis of bank financial statements for applicable institutions and performance metrics. **Comments must be submitted by February 26, 2024. These revisions and clarifications are proposed to be effective as of the June 30, 2024, report date.**

In its current form, the Call Report permits banks to aggregate the amount of loans to NDFIs. If finalized, the proposal would require banks with $10 billion or more in total assets to individually report categories of loans to NDFIs and provide detail on loans to (i) mortgage credit intermediaries; (ii) business credit intermediaries; (iii) private equity funds; (iv) consumer credit intermediaries; brokers and dealers (currently elsewhere in the Call Report); (v) investment firms (currently elsewhere in the Call Report); and (vi) mutual funds (currently elsewhere in the Call Report). Notably, the proposal explicitly refers to margin loans to NDFIs (securities-based loans and non-purpose margin loans) and unused commitments (to NDFIs and depository institutions) that must also be reported in the Call Report.

The proposed change to the Call Report does not mandate new, ongoing regulatory requirements or create prohibitions with respect to bank activities. Instead, it aims to enhance bank regulatory supervision by providing regulators a more detailed view of banks' loan portfolios. By incorporating these details into Call Reports, regulators aim to gain the capability to scrutinize specific loan types closely, thereby detecting concentrations and potential risks in certain business areas. Banks, in response, will need to proactively assess their loan distributions, identifying any focus in loan types. Banks will need to anticipate a deeper dive from regulators into their portfolios for the purpose of assessing safety and soundness, following the review of banks' Call Reports. Given the proliferation of bank lending to NDFIs, this move underscores a strategic shift by the agencies towards more informed and dynamic regulatory oversight.

We are available to assist with any questions arising as a result of the proposed reporting change or any other bank regulatory matters.

Leel Sinai joined Haynes Boone in October 2023 and has over a decade of experience advising banks, their affiliates, and FinTech companies in connection with U.S. federal and state bank, trust company, money transmitter, lender, and anti-money laundering regulatory frameworks, the application and licensing processes for regulated transactions or product offerings, regulatory advice in the context of product analyses and partnership strategies, and anti-money laundering compliance, as well as transaction diligence and execution for significant acquisitions and offerings.

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