MORTGAGE BANKERS ASSOCIATION®
Investing in communities

August 31, 2012

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Email submission: regs.comments@federalreserve.gov, FR Y-14/Q/M

Project: Proposed Revisions to FR Y-14Q, (Quarterly Collection) MSR Valuation Schedule

Dear Ms. Johnson:

On July 6, 2012, the Federal Reserve (Fed) issued for comment several proposed information activities, including Proposed Revisions to FR Y-14Q, (Quarterly Collection) MSR Valuation Schedule (Proposed Schedule) for a 60 day comment period. The Proposed Schedule would collect information on the data that bank holding companies (BHCs) use to value their mortgage servicing rights (MSRs) and the sensitivities of those valuations to changes in economic factors. A list of the proposed disclosure items is attached for reference in Appendix A.

The Mortgage Bankers Association[1] (MBA) thanks the Fed for the opportunity to comment on the Proposed Schedule. Below, please find MBA's general comments and recommendations.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Potential Cost Burden for Small Servicers and Need for Cost/Benefit Analysis

A BHC would be required to complete the Proposed Schedule each quarter if either the average fair market value of MSRs exceeds five percent of the BHC's average Tier I capital during the last four quarters, or the unpaid principal balance of loans under contract for servicing, for which an MSR is calculated, is greater than $100 billion. This would require many servicers both large and small to report. The MSR characteristics of the large and small servicers are likely to be different, making industry-wide comparisons irrelevant. Some members noted that as servicers enter or exit the survey, the overall results from quarter to quarter can become less meaningful.

MBA believes that this new reporting requirement will be unduly burdensome for small, community banks. Although some small servicers utilize an outside firm to value servicing, others perform servicing valuations in-house. MBA believes that the incremental time and cost required to prepare the Proposed Schedule will be unduly burdensome, especially for small servicers or those entering the servicing business.

MBA recommends that the Fed conduct a cost/benefit analysis on the proposal and share those results with the public. The cost/benefit analysis should be specific as to the benefits to the Fed and to the reporting entity, and the Fed should report the cost/benefit by servicing portfolio size.

Purpose of the Survey

MBA notes that the Federal Register mentions that the proposed schedule would enhance the ability to monitor and stress-test MSR valuations that tend to be volatile and sensitive to macroeconomic shocks. While appreciating the objective, many of our members see the Proposed Schedules as repetitive of information already provided through existing reporting mechanisms.

MBA notes that many banks already participate in the OCC's voluntary survey of MSR valuation information. Others participate in PricewaterhouseCoopers surveys and receive usable feedback information for their efforts. Many BHCs are publicly held, and SEC registrants already must report a great deal of information in their quarterly SEC filings, including shocks of their MSR asset and key assumptions used to determine the fair value of MSRs. Finally, large banks are already required to periodically perform shock analysis for the regulators as part of the Comprehensive Capital Analysis and Review (CCAR) stress testing.

Adding an additional requirement like the Proposed Schedule in the absence of any significant information coming back to participants in the survey makes no sense to our members. MBA recommends that the Fed leverage the OCC survey and 10Q information rather than create a new survey. If the purpose of the survey is to gather information in anticipation of a safety and soundness examination, MBA recommends that the Fed include the survey questions in its pre-examination request for information instead of making servicers incur the costs to report the information each quarter.

Market Is Driven Not Just By BHCs

MBA notes that many servicers are not part of a BHC, so the survey results would not necessarily include all major market makers that impact fair value. Further, the proposed restrictions on MSR assets contained in the Basel III proposal may dramatically change the servicing competitive landscape, with more and more servicing being performed by non-depository institutions. MBA also notes that as servicers enter or exit the survey, the overall results from quarter to quarter can become less meaningful.

Assumption Consistency Across Different Servicers

If a goal of the Proposed Schedule is to promote comparability of MSR valuations across all BHCs, MBA does not believe that the Fed will accomplish this. Each BHC has unique servicing portfolios and valuation techniques. Banks use a mix of vendor based and/or proprietary models to value MSRs and imbed a variety of sub models for prepayments, defaults, and interest rates. Banks already have a process to benchmark internally generated MSR values to available market indicators, with each bank having a different set of assumptions thereby rendering them difficult to compare and evaluate without further discussion and analysis across companies.

Capitalization Rate on Generic Product

MBA notes that the Proposed Schedule will include the capitalization rates on generic products based upon a base mortgage rate. MBA believes that it will be difficult to define a base mortgage rate due to 1) individual firms' definition of par mortgage rates and 2) future mortgage rates used in the valuation. Each large institution will have a unique formula to determine future mortgage rates and unique prepayment and default models. Companies that use the same prepayment model, likely tune their models to match their portfolio characteristics. Likewise, MBA expects the results for this item in the survey will be quite varied because the proposal is missing many of the nuances that flavor MSR valuations.

For example, a community bank that services loans from their own geographic area may value their servicing more or less aggressively because of higher or lower assumed prepayment rates, incidences of default, real estate taxes (impacting assumed escrow balances), and other nuances unique to their community. MBA also notes that small banks often have lower prepayment speeds and default rates.

In addition, geographic location can significantly impact assumed escrow balances, interest paid on escrows, assumed default rates, and assumed prepayment speeds.

MBA concludes that the only consistency that the Proposed Schedule will produce with respect to capitalization rate on generic products is consistency in formatting information. It will not result in consistency in models, assumptions and methodologies.

Stress Tests

Our members believe that the proposed stress test scenarios of plus 10 percent and minus 10 percent change in 3 X10 implied swaption volatility should be more broadly defined so that they may include more than a single swaption volatility. Other members note that not all valuation techniques incorporate swaption volatility directly into their MSR valuations. Most term structure models of today allow their users to shock all volatilities up 1 percent and down 1 percent. This would be more consistent and useful to industry participants than the proposed stress test scenarios.

MBA notes that the shocks required for changes in economic conditions include changes in the national unemployment rate and changes in home price index (HPI). In addition to focusing strictly on HPI and unemployment data, some servicers now look at more enriched data including mark-to-market LTV and current FICO while other servicers have broken out product definitions by vintage or LTV and have assigned assumptions at the product level. Further, valuation approaches and product definitions are not consistent across servicers MSR valuation models for voluntary and involuntary speeds and other key assumptions.

Notably, several of the sensitivity analyses relate to specific indexes that may be dependent or independent variables within the MSR valuations. For example, most prepayment models have an HPI factor, as lowering the HPI will reduce voluntary prepayments; however prepayment models don't automatically increase the CDR in such shock environments. Some members model the voluntary and involuntary speeds separately, and a linkage must be created by all surveyed participates in order to produce relevant shocks.

Some MBA members noted that a good portion of the sensitivity measures are not part of the normal risk reporting, as companies focus on value changes as a result of changes in interest rates (risks subject to hedging) rather than on shocks not subject to hedging. Time and effort would be required to set up and test these shocks that are outside of the management risk of the MSR.

Other MBA members noted that stressing an individual input assumption can lead to a misleading conclusion when compared to other firms. MSR assumptions must be viewed holistically because while each firm's interaction of the entire set of MSR assumptions has different sensitivity and impacts, each are designed to obtain a fair market value.

MBA also notes that the proposed shock of $1 increase in servicing cost and $1 decrease in ancillary income are the same shock. Our members suggest that the sensitivity measures be reviewed for materiality, and shocks immaterial to the overall valuation or that are not subject to hedging be removed.

Detailed Valuation Information

Our members noted that the detailed valuation information request will, at a minimum create comparison difficulties as loan type definitions are not consistent across all servicers. For example would FNMA Expanded Approval product be defined as Alt A or Agency?

Finally, each company has a unique stratification methodology that may or may not line up with the individual lines for the Proposed Schedule. Firms will likely be unable to change these internal methodologies to match the request, further adding to the burden of completing this request.

MBA appreciates the opportunity to share its comments with you. Any questions about the information provided herein should be directed to Jim Gross, Vice President Financial Accounting and Public Policy and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or jgross@mortgagebankers.org.

Sincerely,

David H. Stevens
President and Chief Executive Officer

Appendix A

MSR Data Collection Worksheet
Instructions

Note: Report all dollar items in thousands ($'000s)
Report all information for 1st Lien Residential MSRs Only

1. General Instructions:
   - On the line indicated, report the book value and market value of the MSR asset as of the most recent quarter end. Do not report MSR asset net of hedges.
   - On the line indicated, report the aggregate dollar volume of mortgage loans serviced and the total number of mortgage loans serviced.

2. Please provide the capitalization rate (multiple) and base mortgage rate on FNMA/FHLMC, Jumbo and GNMA 30 year products sold during the quarter into a current coupon MBS. Assume that the remittance cycle is Scheduled/Scheduled, taxes and insurance are escrowed, with FICO scores of 700, and LTV of 80%.

3. Valuation Information

   On the line indicated please report the following:

   - Valuation Methodology: Static or OAS
     - For static reporters, the yield curve prepayments based upon: Current, Forward, Other

   - Prepayment Model Used: Proprietary or Vendor
     - If Vendor Model Used, Note Vendor Name

   - Default Model Used: Proprietary or Vendor
     - If Vendor Model Used, Note Vendor Name

   - FHLMC/FNMA normal, delinquency, and default/foreclosure servicing cost per loan ($)
   - FHA normal, delinquency, and default/foreclosure servicing cost per loan ($)
   - VA normal, delinquency, and default/foreclosure servicing cost per loan ($)
   - Non-agency normal, delinquency, and default/foreclosure servicing cost per loan ($)
   - Judicial jurisdiction foreclosure time frame (mos)
   - Non-judicial jurisdiction foreclosure time frame (mos)

4. MSR Valuation Sensitivity Metrics

   Please report the following sensitivity metrics for 1) the total MSR portfolio; 2) fixed rate products including 30 year FHLMC/FNMA, 15 year FHLMC/FNMA, FHA, and

VA; 3) ARMs including FHLMC/FNMA, FHA,VA, and Non-Agency; and 4) ALT-A/Option ARM, and Subprime loans under Memo.

- +100 basis point parallel move in yield curve
- +50 basis point parallel move in yield curve
- +25 basis point parallel move in yield curve
- -25 basis point parallel move in yield curve
- -50 basis point parallel move in yield curve
- -100 basis point parallel move in yield curve
- +10% change in 3X10 Implied Swaption Volatility
- -10% charge in 3X10 Implied Swaption Volatility
- +100 basis point move in OAS/discount rate (option adjusted spread)
- -100 basis point move in OAS/discount rate
- +100 basis point change in CDR (conditional default rate)
- +500 basis point change in CDR
- +1000 basis point change in CDR
- +100 basis point change in CPR
- +500 basis point change in CPR
- +1000 basis point change in CPR
- 3 month increase in foreclosure time frame
- $1 per loan increase in normal servicing cost
- $1 per loan increase in delinquency servicing cost
- $1 per loan increase in default/foreclosure servicing cost
- $1 per loan decline in ancillary income
- +100 basis point change in national unemployment rate
- +500 basis point change in national unemployment rate
- -500 basis point change in HPI (National Core Logic Index)
- -1000 basis point change in HPI (National Core Logic Index)
- -2000 basis point change in HPI (National Core Logic Index)

5. Detailed Valuation Information
On line indicated, please report the following data for each indicated loan type by coupon strata:

- Fair Value (FV) Multiple
- Voluntary Prepayment Speed (CPR)
- Involuntary Prepay Speed (Default Rate) (CDR)
- Discount Rate (in %)
- Option Adjusted Spread (OAS) (in basis points)
- Weighted Average Coupon (WAC) (in %)
- Weighted Average Maturity (WAM) (in months)
- Weighted Average Servicing Fee (WASF) (in %)
- Weighted Average Remaining Term (WART) (in months)
- Weighted Average Life (WAL) (in months)
- Average. Loan Size ($)

- Cost to Service per Loan ($)
- Ancillary Income per Loan ($)
- Unpaid Principal Balance ($)

PRIMATICS® FINANCIAL

8401 Greensboro Drive, Suite 300 McLean, VA 22102

August 31, 2012

Jennifer J. Johnson Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: FR Y-14A/Q/M OMB Control Number: 7100-0341. (Capital Plans; Proposed Agency Information Collection Activities)

Dear Ms. Johnson:

Primatics Financial[1] welcomes the opportunity to provide comments on the proposal, OMB Control Number 7100-0341, "Capital Assessments and Stress Testing information collection". We firmly believe that the stress test embedded in CCAR is a valuable exercise both in support of a capital adequacy review and as a sound risk management tool. Primatics Financial actively supports multiple customers in the execution of their CCAR stress tests, both operationally and in a consultative role, and believe that we have a deep understanding of the conceptual framework around which the stress test was designed. In reviewing the proposed updates to the FR Y-14A template, we believe there are opportunities to amend some of the proposed requirements to enable greater insight into the underlying risk while minimizing the operational impact on BHCs to complete.

Primatics Financial is in a unique position to enable efficient implementation of the final ruling once promulgated. We continue to invest significant resources to enhance our scenario analysis and stress testing solution that complies with accounting guidelines and regulatory guidance. We are committed to keeping our system in compliance with the latest regulations in order to add the most value to our customers. From a system development perspective, the window of time between the closing of the comment period and the start of the stress testing exercise is quite short and expeditious promulgation of the final rule will allow market participants time to complete the necessary systems changes.

1. ASC 310-30 Worksheet – General Comments

[1] Primatics Financial, LLC is a market-leading enterprise software company with proven domain expertise in originated and acquired loan accounting and stress testing. Our system is used by financial institutions to generate economic and accounting results for more than $150 Billion of loans each quarter.

In the current paradigm where expected cash flows are evaluated once per stressed scenario - rather than in successive stages across the CCAR time horizon - actual loan activity during the forecast period will equal the expected cash flow activity. A byproduct of this approach is that, when combined with the accounting rules, there is zero volatility in many of the newly requested fields. In particular, under this scenario there would be no re-classes between Accretable Yield and Non-Accretable Difference. We believe that given the lack of volatility in these items across the time horizon, the value of adding these fields to the revised worksheet is marginal.

A theme that runs throughout the ASC 310-30 worksheet revisions is the bifurcation of PCI accounting results between principal and interest. Given the combined view of expected principal and interest cash flows applied to loans that fall under ASC 310-30, we believe that this will prove operationally complex for BHCs that do not have stress testing systems that perform the calculations at a loan/period level and that the results will provide minimal additional value in understanding the risk associated with the stressed PCI portfolio. Furthermore, under the newly requested bifurcated view, more clarity will be required around whether the expected cash flow streams for principal and interest should be evaluated separately to generate the accounting results or if the accounting results should be determined under a combined cash flow view and then bifurcated based on an allocation factor.

Similar to the bifurcation process referenced above, the "Provision to Allowance/(Reclassification to Accretable Yield)" line item is requested for every period throughout the planning horizon. We find this to be inconsistent with PCI impairment process as the entire discounted shortfall below the unit of account's recorded investment is taken into income in the current period. With one set of stressed cash flow expectations per scenario, the entire provision would show in the first forecast quarter assuming the BHC strictly follows ASC 310-30's prescribed accounting rules. We would request that the Federal Reserve clarify whether it is expected that the entire provision amount will be taken in the first quarter of the forecast period or if it should be spread over the entire forecast horizon based on an allocation factor.

2. ASC 310-30 Worksheet – Planned Acquisitions

Conceptually, stress testing a planned acquisition is a sound risk management practice, and generates vital information for a regulator to assess a capital plan or for a Board of Directors to assess the prudence of an acquisition. However, as prescribed in the context of CCAR, we believe the information added is not consistent with the additional operational effort required.

The benefit of stress testing an acquisition is derived from assessing the impact of adverse conditions that occur post-acquisition. In the CCAR stress test, the impact of the stress scenario would be felt prior to the acquisition closing and the ASC 310-30 impact would not be the primary driver of additional capital demand. As a result of the adverse macroeconomic conditions, the fair value of the acquired assets would be reduced. In the stress testing exercise, one assumes that the purchase price remains constant even as the assets lose value AND that the regulator approves the potentially over-priced acquisition[2]. Given these assumptions, the likely impact of the stress

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[2] Violation of the first assumption would not change the overall point of this comment. If the purchase price were adjusted to reflect the decreased fair value of the loans, the construct of the exercise means there would still be little ASC 310-30 difference between the results of the base scenario and the stress scenario.

scenario would be an increase in goodwill[3] related to the acquisition, not impairment of assets post acquisition. Once the acquisition occurs inside the forecast, the construction of the CCAR stress test exercise (i.e., the one set of cash flows used as forecast and actual for all periods) means there will not be further impairment, only accretion of the Day 1 accretable yield. The change in income from the base scenario to the adverse scenario would not be substantial for many retail exposures – especially assets such as mortgages with long contractual lives – as it would only be a few quarters of accretion.

On behalf of the employees of Primatics Financial, I want to thank you for the opportunity to comment on the Proposal and for your consideration of our views. Should you have any questions regarding our comments, please contact John Lankenau, Director of Valuation Modeling at (703) 942-8309.

Regards,

Peter J. Fitzsimmons
Chairman & Chief Executive Officer
Primatics Financial

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[3] For a planned acquisition where the fair value of the assets acquired is expected to be greater than the purchase price, the stress scenario would lead to a decrease in the gain on bargain purchase relative to the base case. If the stress scenario is severe enough, the bargain purchase gain could regress to the recognition of goodwill.

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Jacob Stone
Corporate Risk Data Governance Officer

440 S Church St
12th floor
Charlotte, NC 28202
T + 1 704 444 5014

September 4, 2012

Ms. Jennifer Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Comments on the Federal Register Notice related to proposed revisions to FR Y-14A/Q/M
Federal Register / Vol. 77, No. 130 / Friday, July 6, 2012
FR Y-14A/Q/M; OMB No. 7100-0341

Dear Ms. Johnson.

Ally appreciates the opportunity to comment on the proposed changes to the FR Y-14A/Q/M. While Ally is supportive of the attempt to standardize and refine the data collection process, we have several suggestions around the operational aspects and requests for clarification to changes proposed. These suggestions are detailed below.

FR Y-14Q general comments

Currently the FRY-14Q is composed of inconsistent file types across its underlying submissions. These various file types provide an extra burden on Ally to verify and produce. Ally respectively requests that a consistent file type be established for all submissions to alleviate the burden of producing the respective schedules. Examples of inconsistent submission formats are as follow:

- Retail Schedules: Submission required as SAS format
- Wholesale Schedules: Submission required as XML format
- Operational Risk Schedules: Submission required as comma delimited file with text qualifiers and with headers
- 14M Schedules: Submission required as pipe (|) delimited file without text qualifiers and without headers

FR Y-14Q Supplemental Schedule

Ally understands and supports the need for collecting a Supplemental schedule to ensure the Federal Reserve has a consistent view of BHC's exposures that are collected at different levels of granularity. However, the following clarifications to the requirements and instructions for this schedule are needed before an accurate submission can be prepared:

1. In general, the instructions do not contain a reference for the reporting date. Ally assumes that the reporting date will be as of quarter end but requests clarification be added to the instructions to eliminate any confusion.
2. Ally requests that additional instructions be included for Column D: Commercial Real Estate (CRE) and Corporate loans under $1MM in committed balance. The FR Y-14Q Corporate Loan and CRE schedules provide an option to not submit loans with a committed balance of less than $1MM. However, Ally chooses not to exercise this option and reports its entire portfolio. Therefore if a BHC reports its entire Wholesale portfolio, including facilities

with a committed balance of less than $1MM, would values still be expected in Column D or should zeros be entered?

3. Column E. Outstanding balance of unplanned overdrafts excluded per the Corporate Loan FR Y-14Q schedule instructions*** is denoted by a *** yet no footnote exists for that notation.

FR Y-14Q Retail Risk Schedule

It appears that some of the Retail schedules were excluded from the proposed changes documentation. For example, the Domestic Auto template was not provided for comment yet the *OMB Supporting Statement for the Capital Assessments and Stress Testing information collection* states that changes will be made:

> to all portfolios that collect the Vintage segment variable, converting the Vintage segment variable to an Age segment variable in order to remove specific date dependencies from the reporting requirements, which would make the ongoing maintenance of the reporting documents and the reporting of the data less burdensome.

Furthermore, from the templates that were provided it appears that the file format will change from a SAS file to a CSV file. However, this change was not notated within any of the supporting statements. Ally has concerns around what changes will, or will not be included within the retail schedules and suggests that no changes be implemented for the retail schedules until all changes are documented and presented for commentary.

FR Y-14Q Basel III/Dodd-Frank and Regulatory Capital Schedules

Ally requests that clarification be provided for the 14A RegCap template. Within the *Capital position reconciliation* worksheet, the funded instrument rows (item #1 and #21) refer to the notional section of the *Proj. Actions&Balances* worksheet. Ally feels that this may have be an error and that the funded instrument rows refer to the *Amount recognized in regulatory capital* section. For example, cell E8 on the *Capital position reconciliation* worksheet refers to a sum of E52:E64 on the *Proj. Actions&Balances* worksheet. However, we believe that cell E8 should instead refer to a sum of P52:P64.

Additional clarification is requested around the proposed the proposed start date and projections. The proposed start date for this collection is listed as September 30th, 2012. However, the first date shown within the 14Q template is Q4 2012. Also, for the 14A Basel III worksheet it appears that the projections will request data through 2019. If the instructions from Q3 2011 were followed for the 14A Basel III worksheet, projections would only require data through 2017. This change was not noted in any of the commentary accompanying these changes.

FR Y-14Q PPNR

In the Quarterly PPNR metrics worksheet a new line has been added requesting *Collateral Underlying Leases for Which the Bank is the Lessor.* This request is further segregated into *Auto* and *Other.* There is confusion on whether the value required only pertains to amounts recorded in premises and fixed assets, or whether the amount includes any collateral underlying leases for which the bank is the lessor on the balance sheet excluding amounts recorded in loans and leases (BHCK5369 and BHCKB528). Within the Annual FR Y-14A Summary file in the *Balance Sheet* worksheet the same disclosure requirement is listed under premises and fixed assets and indicates that the total of collateral underlying leases for which the bank is the lessor and other should reconcile back to BHCK2145. Ally requests that clarification be provided concerning this requirement.

Additionally, within the PPNR NII Worksheet *Average Interest-Bearing Asset Balances* and *Average Rates Earned* is now being requested at a more granular level. Ally does not currently collect the granular level detail to compute yields at the requested level (e.g. 1st liens, Jr. liens, HELOCs). Due to the burden associated with collecting and storing this data, Ally requests to provide average balances and yields at the lowest level of detail that is available.

Furthermore, newly added line items are requiring a one-time collection of historical data. Due to the deconsolidation of our ResCap subsidiary we do not have access to certain subsystems that contained non general ledger data. Because of this, the historical data is not available for reporting.

FR Y-14Q Attestation

The Federal Reserve proposes requiring the signature of the BHC's CFO on the FR Y-14A/Q/M. While Ally understands the need for senior level review of this regulatory report, Ally feels that a signature from the CFO provides an undue and unnecessary burden to its executive and requests that the Federal Reserve reconsider this requirement. Ally suggests that a signature from the BHC's Chief Risk Officer would be more appropriate for the data included within the FR Y-14A/Q/M.

Additionally, the proposed attestation cover page states:

> *Bank holding companies must maintain in their files a manually signed and attested printout of the data submitted.* The cover page from the Federal Reserve's website reporting form should be used to fulfill the signature and attestation requirement and this page should be attached to the printout placed in the bank holding company's files.

Ally currently does not maintain a printed copy of the FR Y-14A/Q/M as this adds no value to either the BHC or the FRB and puts an undue burden on Ally. An example quantifying this burden follows for a single file within the FR Y-14M submission containing First Lien Loan Level information:

Number of pages:	28,139
Reams of paper:	56
Time to print (50PPM):	9.37 hours
Toner Cartridges:	1

Please note that this is for a single file that compiles only a small portion of the overall FR Y-14A/Q/M submission. Ally suggests this requirement be altered stating that each BHC is required to keep a digital copy of the FR Y-14A/Q/M submission.

Sincerely,

Jacob I. Stone

Jacob I. Stone

CC:
Joe Stout, Ally Financial

BB&T

BB&T Corporation

150 South Stratford Road
Winston-Salem, NC 27104
(336) 733-3031
Fax (336) 733-0340

Daryl N. Bible
Senior Executive Vice President &
Chief Financial Officer

September 4, 2012

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Notice of Proposed Rulemaking on
Capital Assessment and Stress Testing Information Collection
OMB Control Number: 7100-0341

Dear Ms. Johnson:

BB&T Corporation ("BB&T") appreciates the opportunity to comment on the proposed rule regarding capital assessment and stress testing information collection ("Proposal") published by the Federal Reserve Board ("FRB") on July 6, 2012. The Proposal would require large banking organizations with total consolidated assets of more than $50 billion to submit additional information on FR Y-14A/Q/M forms.

BB&T Corporation (NYSE: BBT) is one of the largest financial services holding companies in the U.S. with $178.5 billion in assets and market capitalization of $21.6 billion, as of June 30, 2012. Based in Winston-Salem, N.C., the company operates approximately 1,800 financial centers in 12 states and Washington, D.C., and offers a full range of consumer and commercial banking, securities brokerage, asset management, mortgage and insurance products and services. A Fortune 500 company, BB&T is consistently recognized for outstanding client satisfaction by J.D. Power and Associates, the U.S. Small Business Administration, Greenwich Associates and others.

BB&T believes large banking organizations should have a robust, forward-looking capital planning process that accounts for their unique risks, including regular, meaningful stress testing. The rules developed to achieve this important policy objective should be efficient and practical. While BB&T supports the Proposal's overall objective, we have concerns regarding the following:

- The continual changes in reporting requirements over the past year and lack of comprehensive and detailed instructions
- The granularity of data collection appears to have advanced beyond material risks and their linkage to capital and viability
- The timeframe for implementing the new FR Y-14Q MSR Valuation schedule
- The removal of the primary and supplementation designation for reporting net interest income on the FR Y-14A/Q Pre-Provision Net Revenue (PPNR) worksheets
- The materiality of new reporting items and timeframe for implementing disaggregated ALLL forecasting on the FR Y-14A Summary schedule
- Reporting data on acquisition targets and executing CCAR stress tests given the scope of changes and granularity of data collection
- The timing of receiving supervisory scenarios and number of scenarios required for FR Y-14A reporting.

I. Concerns Regarding Continuous Change and CFO Attestation

A. Reporting Requirements are Continuously Changing

The FRB formalized the FR Y-14A/Q templates for CCAR (Comprehensive Capital Analysis and Review) 2012. The FR Y-14A templates replaced the CCAR 2011 templates and increased the granularity of reporting stress test results. The FR Y-14Q templates were a new regulatory reporting requirement implemented in 2011. The FRB has since revised the FR Y-14Q/M reporting twice, implementing new FR Y-14Q/M templates on June 30, 2012 and making additional revisions in this Proposal. This constant state of change does not permit respondents sufficient time to develop well-controlled reporting environments for the FR Y-14A/Q/M processes.

Constant changes to reporting requirements are distracting banking organizations from responsibly improving the capital assessment models and reporting process. Stable reporting requirements will permit banking organization to achieve greater progress towards robust capital assessment processes.

B. The Proposed Schedules Lack Comprehensive and Detailed Instructions

Detailed and inclusive instructions for completing FR Y-14A/Q/M schedules are necessary for accurate, complete, and timely responses, as well as consistency of responses among reporting institutions. The FRB provides relatively brief instructions for the FR Y-14A/Q/M schedules. The FR Y-14A schedules have just 51 pages of instruction, largely focused on documentation requirements. By comparison, the well established FR Y-9C reporting has 511 pages of instructions. The FR Y-14A/Q introduced several new fields without detailed instructions. This yielded significant industry confusion which prompted the FRB to issue lengthy frequently asked questions ("FAQs") to clarify the requirements. The current Proposal again introduces more new fields without detailed instructions or definitions. Clear and complete instructions for completing the data collection schedules would benefit both the FRB and the industry by reducing inefficiencies, minimizing resubmissions of reports, and increasing accuracy of the information submitted.

We recommend the FRB provide more comprehensive instructions for the FR Y-14A/Q/M schedules. However, if new or revised instructions are released shortly before the submission date, the FRB should extend the deadline for submitting the report to allow banking organizations sufficient time to comply with the new requirements.

C. The FAQ Process is Inadequate

The lack of comprehensive and detailed instructions necessitates a strong FAQ process. The current process occurs only through limited electronic means, precluding the opportunity to have detailed discussions around complex questions that would result in consistent, complete, and accurate responses. This leaves most questions incompletely addressed.

Some FAQ answers result in new instructions being issued shortly before reporting deadlines, significantly impacting the reporting requirements and the respondents' supporting processes. For example, a July 26th answer changed the FR Y-14Q/M template for reporting several business and corporate card products from the Credit Card schedule to the Corporate Loan schedule only four days before the reporting deadline. The receipt of FAQ responses near deadlines does not permit sufficient time to adjust reporting processes to new instructions and perform a thorough vetting process for submissions.

We encourage the FRB to consider making the following enhancements to the FAQ process:

- Decrease the turnaround time for answers. One day improvements in the turnaround time can make a significant difference given the tight timeframe for executing stress testing and reporting processes.
- Freeze the FAQ process at least ten days before FR Y-14Q/M submission deadlines and at least a few weeks before FR Y-14A submission deadlines. If FAQs are released shortly before the submission date, the FRB should make the guidance effective for the next reporting deadline to allow banking organizations sufficient time to comply with the new requirements.
- Offer regular teleconference meetings between banks and the Federal Reserve during reporting timeframes. These calls will help address complex questions in a more complete and detailed manner. This enhancement could reduce the number of questions and reduce confusion regarding answers. The responses could be emailed to all banks after the conference call.

D. CFO Attestation

The Proposal would require the CFO to attest to FR Y-14A/Q/M submissions. Given the continued changes in the FR Y-14A/Q/M reporting requirements, lack of clarity in the instructions, and the lack of the stability in the reporting process, we urge the FRB to postpone the implementation of the CFO attestation. Specifically, the CFO should not be required to attest to these schedules until the regulatory reporting process is more stable and supported by clear and comprehensive instructions. Until the process stabilizes, the Board of Directors' review and approval of stress test results and capital plans provides sufficient governance of key data (e.g., capital ratios, total loan losses, etc.) reported in the FR Y-14A schedules.

The Proposal requires the CFO to attest to FR Y-14A forms, which report scenario-based forecasts representing a forward looking view of financial performance. The attestation for FR Y-14A forms should include a safe harbor statement to protect management from providing forward looking data in the FR Y-14A forms and making forward looking statements in the documentation and other materials accompanying the FR Y-14A forms. The Securities and Exchange Commission provides a safe harbor for making forward looking statements in financial reporting in Section 27A of the Securities Act of 1933. After the process stabilizes and should the FRB require attestation, the FRB should consider including a safe harbor statement in the FR Y-14A attestation form removing the CFO from liability regarding baseline and stress forecasts provided the submitted FR Y-14A forms conform to the available instructions.

II. Reporting Should Be Focused on Linking Risk to Capital and Institution Viability

The Proposal increases the granularity of data reported on FR Y-14A/Q/M forms and is intended to facilitate regulatory assessments of capital adequacy. Some of the enhanced requirements add reporting for items which have nominal risk sensitivities. For example, the noninterest income and expense detail on the *PPNR Projections* worksheet includes items which are likely to represent an immaterial portion of total revenues. The reporting requirements appear to have advanced beyond the linkage of risk to capital and an organization's viability. Once beyond the linkage of risk to capital and viability, the increased reporting does not add value. The Proposal is likely to result in an extensive and unnecessarily burdensome regulatory reporting exercise, providing ineffectual data for the use of bank management and distracting banking organizations from proactive risk management activities and enhancement of stress testing models and processes.

III. New FR Y-14Q MSR Valuation Schedule

The Proposal would implement a new FR Y-14Q Mortgage Servicing Rights (MSR) Valuation schedule, requesting data on MSR valuation methodologies and sensitivities. The proposed sensitivity data requires banking organizations to perform extensive sensitivity analysis exceeding existing reporting or regulatory requirements. The proposed MSR schedule is unique because it is the first quarterly report requiring sensitivity metrics which do not normally appear on a reporting institution's general ledger or loan system. The Proposal may require banking organizations to modify existing MSR models because existing valuation models may not factor in all sensitivity metrics or have an established process for reporting all proposed metrics as a model output. Additional time is required for banking organizations to responsibly develop and validate modified models in compliance with SR 11-7 (Guidance for Model Risk Management), as well as implement a new reporting process.

In addition, the proposed schedule requires expanded instructions to ensure accurate data submissions. For example, the instructions do not provide a zero rate assumption for downward interest rate shocks. Similarly, the sensitivity metrics' instructions do not state the manner of performing shocks on CDR, CPR or HPI, detailing whether the respective vectors should shift in parallel by the basis point change or should be shocked in another manner.

We appreciated the FRB providing an opportunity to address the new templates on the August 15, 2012 outreach call and its consideration of the technical questions raised on the call. We look forward to receiving clarification to these questions as the FRB considers questions posed during the comment period. However, providing answers after the comment period necessarily means banking organizations cannot develop and validate a modified model until after the comment period ends in September. If the November 9, 2012 initial submission date is retained, it will provide banking organizations with less than two months to ask questions regarding the final schedule and instructions, develop model changes, validate models, and create and execute a new reporting process. The FRB should consider the model change process and lack of comprehensive instructions and answers when determining the implementation date for this schedule, particularly the sensitivity metrics elements.

The postponement of the FR Y-14Q MSR schedule implementation to a date no earlier than March 31, 2013 is strongly urged and will ensure banking organizations have time to both enhance models and complete CCAR 2013. If the FRB decides to maintain the September 30, 2012 implementation date, BB&T urges the FRB to consider phasing in the reporting requirements for MSR valuation sensitivity metrics and provide additional instructions with the final schedule.

The FR Y-14Q MSR Valuation schedule could also benefit banking organizations if anonymized results were made available to respondents. We encourage the FRB to consider distributing results in this blind manner.

IV. Primary and Supplemental Designation Should Remain for Net Interest Income Reporting on the FR Y-14A/Q Pre-Provision Net Revenue (PPNR) Worksheets

The Proposal removes the designation of primary and supplemental worksheets for reporting net interest income on the FR Y-14A/Q Pre-Provision Net Revenue (PPNR) schedule. The current PPNR worksheets permit banking organizations to select either the

PPNR Projections (Submissions) or *PPNR Net Interest Income* worksheet as the primary schedule for reporting net interest income. The supplemental schedule is currently provided on a "best efforts" basis. The Proposal would require reporting and forecasting of net interest income in multiple formats without permitting banking organizations to clarify the format primarily used in internal forecasting.

The *PPNR Net Interest Income* worksheet requires a net interest income breakdown by asset and liability class and the *PPNR Projections* worksheet requires a breakdown by business segment. A robust forecasting and stress testing framework requires one approach, not two. Banking organizations may primarily manage their margin by asset and liability class and not by business segmentation. Additionally, neither approach is consistent with the FR Y-9C reporting of net interest income. Requiring both reporting approaches creates the burden of a second forecasting and reporting exercise without providing additional insights to management. A single forecasting and reporting approach sufficiently facilitates decision-making by banking management.

We strongly recommend the FRB continue permitting banking organizations to designate either the *PPNR Net Interest Income* or *PPNR Projections* as primary for PPNR reporting.

V. <u>FR Y-14A Summary Schedules</u>

A. Granularity of Reporting Loan Forecasts Exceeds FR Y-9C Reporting

The proposed FR Y-14A Summary schedule has increased the granularity for reporting loan losses and balances. The reporting used to manage banking organizations does not align with the reporting required by regulation. Stress testing leverages forecasting processes, which usually align with internal operational reporting rather than regulatory reporting.

The proposed amplification of detail requires organizations to report stress test results in a manner increasingly inconsistent with operations, forecasting processes, and existing regulatory reporting. This level of granularity is not required for reporting actual results. Certain breakouts (e.g., first lien HELOANs) do not enhance the understanding of stress test results because the loans' risk characteristics are similar to loans reported in the same FR Y-9C category (e.g., first mortgages). Banking organizations will be required to reconstruct reporting processes to adopt their forecast to the proposed reporting format which increasingly diverges from the FR Y-9C reporting. BB&T requests the FRB reconsider the breakouts for loans on the FR Y-14A Summary schedule to minimize the divergence from FR Y-9C reporting.

B. FR Y-14A Loan Forecasts Should Have Materiality Rules

The FR Y-14Q/M loan schedules currently have materiality rules, which only require reporting if a portfolio's outstanding loan balances are at least 5% of Tier 1 Capital or

$5 billion. However, no materiality rules exist for reporting forecasted loan balances and losses on the FR Y-14A Summary worksheets, specifically the *Income Statement, Balance Sheet*, and *Retail Balance and Loss Projections*. Consideration should be given to implementing materiality rules, similar to those for FR Y-14Q/M loan schedules, for reporting forecasted loan losses and balances in the FR Y-14A Summary worksheets.

C. Disaggregated Forecast for ALLL and Provision Expense on *Income Statement*

The Proposal adds sections for disaggregated data on allowance for loan and lease losses (ALLL) and provision expense to the FR Y-14A *Income Statement*. The FRB issued a proposed notice of rulemaking for new FR Y-9C schedule HI-C, implementing disaggregated ALLL reporting for actual results on November 21, 2011. On March 16, 2012 the FRB decided the schedule HI-C should remain under review with implementation no earlier than September 30, 2012. A finalized rule implementing disaggregated ALLL for FR Y-9C has not been published. If banking organizations are not required to report disaggregated ALLL for reporting actual results on the FR Y-9C form, banking organizations should not have to report forecasts of disaggregated ALLL on the FR Y-14A form.

Disaggregated data on ALLL is inconsistent with how banks estimate, manage and maintain their ALLL and how banks forecast ALLL for stress testing purposes. Banking organizations may not be able to use existing ALLL models to implement disaggregated forecasting of ALLL in stress testing. Existing ALLL models are used for reporting ALLL in accordance with the generally accepted accounting principles (GAAP). GAAP requires ALLL estimates based on embedded losses from a static pool on the banking organization's current balance sheet. Stress testing estimates expected losses and pro forma ALLL from a dynamic pool over several quarters. GAAP does not permit organizations to incorporate future events in estimating ALLL. Forecasting disaggregated ALLL in stress testing may require the development of new forecasting models. Banking organizations should have more time to responsibly develop, test, and validate new models in compliance with SR 11-7 (Guidance for Model Risk Management).

BB&T recommends the FRB to postpone the implementation of disaggregate forecasts for ALLL and provision expense until the CCAR 2014 exercise with an effective date of September 30, 2013. We further urge the FRB to require a less granular disaggregation of ALLL and provision expense for FR Y-14A reporting.

D. Projecting Vintages on *Retail Balance and Loss Projections Worksheet*

The Proposal adds reporting items for loan balances by forecast vintages for card products, a process not required to determine the projections. Organizations may make general assumptions regarding usage of revolving credit in the future which does not consider different usage rates for different vintages. Usage should be defined by the economic environment without requiring extra assumptions regarding usage by future vintages. Banking organizations are required to explain their forecasting methodology for retail balances in the documentation accompanying FR Y-14A retail schedules. Therefore the FRB should consider removing the requirement of reporting forecast balances by future vintages for card products.

VI. Acquisition Rules

A. Grace Period Should be Granted for FR Y-14Q/M Reporting After Acquisitions

The FR Y-14Q/M loan collection schedules require loan-level and portfolio-level details on the banking organization's loan portfolio, including data from the acquiree's portfolio. The process for populating these schedules uses the most granular information available on loan systems. The Proposal would require the CFO attest to these submissions. However, banking organizations generally do not have acquired institutions' loan data on their loan systems on the date of legal close.

If a banking organization acquires an institution with less than $50 billion in consolidated assets, the acquired institution would not have experience reporting FR Y-14Q/M schedules. The acquiree may not have loan systems capable of this level of reporting. Banking organizations should not have to coordinate reporting FR Y-14Q/M while integrating an acquired organization. The banking organization can accurately complete and attest to the reported schedule only after the loans are converted onto the acquirer's loan systems.

Sarbanes-Oxley provides acquired institutions with a one year exemption from the requirements of Section 404, Management's Opinion of the Effectiveness of Internal Controls. The proposed CFO attestation would be inconsistent with Sarbanes-Oxley if it required reporting and an attestation for loan-level data collection within a year of acquisition. Banking organizations should have time to integrate systems, validate system data, and establish internal controls for compiling and reporting an acquired institution's data.

The FRB previously responded to this concern on May 29, 2012 stating it would consider on a case-by-case basis requests to file a delayed submission for newly acquired data following an acquisition. BB&T appreciates the FRB making this statement though BB&T believes the FRB should more clearly establish the process and criteria for requesting and granting delays for FR Y-14Q/M reporting after an acquisition. The FRB should institute a one year grace period for reporting acquired institutions' loans on FR Y-14Q/M schedules to permit time for systems conversion after the acquisition. The FRB should establish a formal process and criteria for requesting and determining a grace period for acquisitions.

B. Increased Granularity Increases Difficulty During Acquisitions

If a banking organization proposes an acquisition in its capital plan, it must incorporate the acquiree's data into its FR Y-14A reports. However, the acquiring organization does not have this data on its general ledger or loan systems. A banking organization has sufficient information to evaluate the acquisition and perform stress testing at a high level. However, a banking organization cannot meaningfully forecast loan losses in the granular FR Y-14A reporting format until the acquiree's loans appear on its loan systems. The FR Y-14A Summary templates should provide flexibility for reporting acquisitions at a less granular level than its existing operations. The acquiree's loan balances, losses, and asset yields should be reported in a less granular manner, possibly four to six categories, on the FR Y-14A schedules prior to systems conversion. Similarly, an acquiree's liabilities, cost of funding, and noninterest income and expenses should be reported at a less granular level on the FR Y-14A schedules prior to systems conversion.

BB&T recommends the FRB create reporting flexibility for planned acquisitions in the FR Y-14A templates. This flexibility would result in a forecast reflective of the information available prior to legal close and systems conversion.

VII. <u>Timing and Number of Scenarios</u>

A. Timing of Scenarios

The Proposal requires the CFO to attest to FR Y-14A submissions, which report forecasts in multiple scenarios in a very detailed manner. However, the Proposal does not define the timeframe for providing supervisory scenarios to banking organizations. Banking organizations received the supervisory scenarios the week of Thanksgiving in CCAR 2011 and 2012. This timeframe provided six weeks for asking questions about the scenarios, performing stress testing, completing regulatory templates, executing internal controls, receiving Board of Directors approval, and submitting capital plans. This period coincides with annual budgeting and planning and year-end closing activities. The Proposal necessarily adds time to a process already operating under a very restrictive timeframe. Banking organizations can best provide and attest to quality submissions if the FRB provides banks with sufficient time to perform stress testing and complete FR Y-14A templates. However, the Proposal would result in less time due to the increased granularity of the FR Y-14A templates and the need for the CFO to thoroughly review the templates while providing attestation. Furthermore, the FDIC is proposing annual stress testing for depository institutions (FDIC RIN 3064-AD91), which implies additional time requirements for performing enterprise-wide and depository institution stress testing.

The FRB should consider releasing stress test scenarios no later than October 15^{th} each year. This timeframe provides banking organizations with appropriate time to perform and report stress testing results and methodologies in an orderly and controlled manner.

B. Number and Coordination of Scenarios

The Proposal increases the granularity for reporting stress test results in FR Y-14A schedules; it does not specify the number of scenarios included in the CCAR stress test. In the Enhanced Prudential Standards (RIN 7100-AD86) notice of proposed rulemaking, the FRB is currently proposing covered companies perform stress testing under three sets of conditions: baseline, adverse and severely adverse. In its notice of proposed rulemaking regarding annual bank stress testing (FDIC RIN 3064-AD91), the FDIC is also proposing the requirement of performing stress testing under three sets of conditions. If the regulatory agencies do not coordinate on the creation of the baseline and stress scenarios, covered banks may be required to perform at least six different stress tests in a single quarter. The agencies should coordinate on both the scenario's severity and the macroeconomic variables distributed. A lack of coordination across agencies creates the burden of performing twice the number of scenarios without providing additional value. This impact is amplified under the Proposal by the increased requirements for FR Y-14A reporting.

The FRB should coordinate with other regulatory agencies on the number of baseline and stress scenarios performed during CCAR so banking organizations only have to perform stress testing under three different sets of conditions. The three sets of conditions should be the same for enterprise-wide and depository institution stress tests.

VIII. Conclusion

In closing, while BB&T supports the overall objectives of this Proposal, we request the FRB consider the suggestions and alternatives presented herein, which we believe will help ensure these objectives are achieved. Thank you for the opportunity to comment on this important Proposal and for your consideration of BB&T's comments.

Sincerely,

Daryl Bible

Daryl Bible
BB&T
Chief Financial Officer

BBVA Compass

Angel Reglero
Chief Financial Officer

Phone 205-297-4946
Fax 205-297-4733
angel.reglero@bbvacompass.com

15 20th Street South, Suite 902
Birmingham, AL 35233

August 31, 2012

Jennifer L. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW.
Washington, D.C. 20551

Re: **OMB Control Number 7100-0341** – Capital Assessments and Stress Testing Information Collection – Agency Form No. FR Y-14A/Q/M; Federal Register Vol. 77, Notice No. 130, Request for Comment on Information Collection Proposal of July 6, 2012

Dear Ms. Johnson:

Please accept this letter as BBVA USA Bancshares, Inc.'s ("BBVA USA") response to your request for additional feedback from those banks considered as first time respondents of the FR Y-14 Q/M on ways to reduce the reporting burden.

The Federal Reserve has asked for comment on the allowance of a transition period during which first-time respondents of the FR Y-Q/M may (1) use a tailored materiality threshold, (2) submit the schedules under an extended filing deadline, or (3) both. In the case of the use of a materiality threshold, our interpretation is that those thresholds would be applicable to certain credit portfolios. This would, in turn, create the need for the determination and reconciliation of the referred thresholds, which would add complexity to the overall process and further increase the burden of the reporting effort. Consequently, we believe that the use of a tailored materiality threshold during a transition period, under the conditions stated above, would not be useful in reducing the reporting burden.

The use of a transition period to allow for the submission of schedules under an extended filing deadline, however, would be useful in reducing the reporting burden. BBVA USA has been building a reporting process to gather the data for the FR Y-14 series schedules, which entails efforts related to validating sourcing of the data and testing the integrity of the data. Based on our analysis of the template's additions and changes, and the resources needed to accommodate those changes, we would be adversely impacted by these changes and additions under the proposed timeline. Additionally, as with other BHCs, BBVA USA has extensive resources dedicated to developing the capital plan for submission to the Federal Reserve in January 2013. Many of those same resources will be needed to address the proposed changes to the FR Y-14 Q/M schedules. An extended filing deadline would alleviate the burden associated with having to address both of these tasks in the same or overlapping time periods.

BBVA USA (1) suggests utilizing a reporting 'as of' date of September 30, 2012 for submission in conjunction with the firm's capital plan and FR Y-14A in January 2013 and (2) requests the required schedules be finalized prior to November 1, 2012.

We trust these statements are responsive to your request. As always, we appreciate the opportunity to participate in the comment process. If you have questions or require further explanation or clarification of our comments or suggestions, please feel free to contact me.

Very truly yours,

Angel Reglero
Chief Financial Officer

cc: Manolo Sánchez
Lawrence Uhlick
Javier Hernández
Shane Clanton
Rita Eads Milazzo
Mike Carlson
Ross Baker
Mark Sislak (via email to: mark.sislak@banking.alabama.gov)
Paul Roberts (via email to: paul.roberts@atl.frb.org)

Morgan Stanley

750 Seventh Avenue

NEW YORK, NY 10019

September 4, 2012

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Attention: Jennifer J. Johnson, Secretary

Re: Capital Assessments and Stress Testing information collection (OMB control number 7100 0341)

Ladies and Gentlemen:

Morgan Stanley appreciates the opportunity to comment on the proposed revision to the Board of Governors of the Federal Reserve System's (the "**Board**") report, *Capital Assessments and Stress Testing information collection* (the "**Proposal**").[1] We strongly support the comments on the Proposal submitted by The Clearing House Association L.L.C. and the American Bankers Association.

We write separately to emphasize the following points as means to enhance the quality, utility and clarity of the information to be collected.

1. FR Y-14Q: Trading, PE and Other Fair Value Assets Schedule

Credit Correlation Worksheet

The Proposal includes new columns to split out the long and short market value and notional exposures for index and bespoke products. These new columns are split out into attachment/detachment point rows corresponding to the previously existing correlation sensitivity table. While the specified split by attachment/detachment makes sense for the correlation sensitivity, it is not feasible for the market values and notionals since the positions will have a large variety of overlapping attachment and detachment points. We suggest simplifying the long and short breakout tables to only three buckets for clarity and consistency: (i) an "Equity Tranche" bucket for a position that has an attachment point of 0%, (ii) a

[1] Board, "Proposed Agency Information Collection Activities; Comment Request," 77 F.R. 40051 (July 6, 2012).

"Mezzanine Tranche" for any position that has a non-0% attachment and non-100% detachment, and (iii) a "Super Senior Tranche" for positions with a detachment point of 100%.

We suggest removing the XO (or crossover) category from the tranches as XO is implied from market observations but is not an index tranche per se. The implied XO surface observed from the market for index tranches would be specific to a particular covered company.

IDR Corporate Credit Worksheet

It would be helpful for the Proposal to be more prescriptive on the grossing methodology the Board wishes for firms to employ, especially for index products. For these products, we suggest index grossing based upon the unique combination of the following characteristics: reference entity, attachment/detachment point, index series, and index family.

Munis Worksheet

We suggest further disaggregating the Munis worksheet into taxable and tax exempt bonds.

Questions

In addition to the points described above, we have certain questions about fields in the FR Y-14Q, as revised by the Proposal. These questions are included in Appendix A to this letter. We respectfully request that the Board clarify these issues when publishing the final version of the revised FR Y-14Q.

2. FR Y-14A: Basel III & Dodd-Frank Schedule

The draft schedule calls for annual projections through Q4 2019. While this forecast horizon coincides with the Basel III phase-in period, it is difficult for covered companies to project this far out into the future with any meaningful level of precision. As a result, firms run the risk of implying a greater degree of accuracy than is possible, given the highly volatile nature of the capital markets. We recommend that the Board consider a shorter forecast horizon, consistent with the 2012 CCAR.

Thank you for considering our comments included in this letter. We appreciate the opportunity to share our views with the Board and would be pleased to provide any further clarification or information that the Board may find helpful. If you have any questions or requests related to this letter, please contact Candice Koederitz, Managing Director of Morgan Stanley, at (212) 762-4219 (e-mail: Candice.Koederitz@morganstanley.com).

Respectfully submitted,

Candice Koederitz

Candice Koederitz
Managing Director, Morgan Stanley

Appendix A

Specific Requests for Clarification in the FR Y-14Q

FR Y-14Q: Trading, PE and Other Fair Value Assets Schedule

Securitized Products Worksheet

1. In the new template, it is unclear whether the "CLO" column is for Cash CLO only or also for CDS on CLO. Should we include CDS on CLO along with cash in the CLO column, or in the "Other/Unspecified" column?

2. For warehouse, some lines are set up with initial credit enhancement / overcollateralization (OC) and performance based triggers but may not have margining features. Should OC be considered part of first loss protection and be included in the "Total Protection" column?

3. In some warehouse lines, the underlying collateral is loans originated to agency conforming standards. Is it possible to have a separate category for Agency Warehouse lending, and include it under the "Agencies" Tab?

C. Matthew Lusco
Senior Executive Vice President
Chief Risk Officer

REGIONS

September 4, 2012

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Jennifer J. Johnson, Secretary

Re: Proposed Agency Information Collection Activities – OMB 7100-0341

Ladies and Gentlemen:

I am writing on behalf of Regions Financial Corporation ("Regions") to comment on the proposed changes to the Data Collection requirements of the Comprehensive Capital Analysis and Review ("CCAR") referenced above. Regions supports the goal of the CCAR process to help ensure that large banks have strong, enterprise-wide risk measurement and management processes supporting their internal assessments of capital adequacy. Regions further appreciates that this process is evolving and that both the Federal Reserve and the industry will need to continue to adapt as this process evolves. However, after thoughtful review of the most recent proposed FR Y-14A, FR Y-14M, and FR Y-14Q reporting forms and the accompanying instructions, Regions has two primary concerns with the requirements as proposed. First, while Regions appreciates the importance of providing additional data to enhance the ability of the Federal Reserve to effectively accomplish their supervisory responsibilities, the significant expansion of the data requirements should be carefully examined by the Federal Reserve in order to determine whether more time should be allowed for implementation. Second, Regions strongly believes that the Federal Reserve should reevaluate the necessity of the attestation requirement of the Chief Financial Officer ("CFO"). However, if the Federal Reserve decides to adopt the attestation requirement, Regions recommends that the effective date be postponed until there is greater stability regarding the templates for which the attestation is required, and that no attestation should be required for forecasted data.

Since the 2010 Supervisory Capital Assessment Program ("SCAP") was introduced to the 19 selected bank holding companies, the process has grown into a comprehensive supervisory tool. Included within this expansion has been the addition of new templates, significant modifications to existing templates, and increases in the frequency of reporting. In a relatively short period of time, an annual process beginning in late 2010 to determine a bank's capital levels in a stressed scenario has evolved into a data collection process involving monthly, quarterly and annual schedules ranging from descriptions of capital instruments to granular loan data and detailed forecasting. While banks have begun to build the necessary infrastructure to better support these efforts, much of the effort requires manual processes outside of those covered by internal controls over the core financial reporting infrastructure. Moreover, stability and certainty in the data requests is needed before this efficiency and effectiveness can be maximized.

Regions Financial Corporation
Post Office Box 11007
Birmingham, Alabama 35288
(205) 264.4732
Fax (205) 264.5017

As the data collection efforts have increased in scope, Regions is becoming increasingly concerned that the continued expansion of these efforts and the continuing evolution of the templates will adversely impact the ability of banks to build effective processes to support these requirements. Although Regions recognizes that collecting industry data is an important component of the Federal Reserve's supervisory mandate, we believe that the pace of change with regard to these templates should be moderated. This will allow banks to invest in more efficient internal processes which in the end will make these efforts more effective for both the industry and the Federal Reserve.

Regions has several concerns with regard to the proposed CFO attestation requirement. Regions recognizes that such requirements exist today for Internal Control over Financial Reporting as provided for under Section 404 of the Sarbanes-Oxley Act ("SOX") and the FR Y-9C. However, the Company believes there are several material differences in the standards underlying these processes. Perhaps most importantly are the attestation standards promulgated by the Committee of Sponsoring Organizations ("COSO") that provide the basis for SOX attestation over financial reporting, the general ledger and the primary books and records that support external reporting. On a related basis the FR Y-9C primarily consists of financial results for the current quarter, many of which are able to be reconciled to the bank's general ledger. Chief Financial Officers have obtained a level of comfort over the FR Y-9C process through a combination of familiarity with the reports, sufficient time to develop processes, clear guidance, and the ability to reconcile data to the primary books and records and other SEC filings. Given the granular level of the CCAR data related to information that is not recorded on the general ledger, it would be extremely challenging for the CFO to ensure that all data has been validated outside of general controls and system validations. Also, given the relatively short time these schedules have been available, banks need additional time to develop appropriate reconciliation procedures to provide additional controls regarding data submitted.

Also, banks still need considerable guidance from the Federal Reserve in the population of the templates. Due to ongoing process improvements, the industry continues to be forced to make assumptions on data submissions, resulting in a series of re-submissions for which the CFO should not be compelled to attest. Compared to similar regulatory forms, such as the FR Y-9C (which has over 500 pages of detailed instructions), there is still considerable work to be done by both the Federal Reserve and the industry to make this a more effective process. Also, unlike similar major legislative reforms, such as Sarbanes-Oxley, where industries were provided time to effectively comprehend new and significant requirements, banks have had insufficient notice to develop their internal processes and systems and staff to the level needed. The amount of resources and level of controls required is still a critical unknown as schedules are continually modified and added.

Regions has other concerns regarding attestation of the submissions that pertain to specific aspects of the process. Regions strongly believes that if the attestation requirement is adopted, all forecasted information should be exempt from the attestation. Forecasted data by definition is subject to considerable variability given the assumptions required at the time a forecast is created.

Additionally, Regions acknowledges the Federal Reserve's desire to ensure accuracy within the CCAR data collection submissions but stresses that the incentive for banks to report accurate and complete data already exists within the current submissions. Banks ultimately desire to return maximum value to their shareholders, and the distribution of capital is a key component of that strategy. The necessity of obtaining approval of the capital plan from the Federal Reserve provides more than sufficient motivation for banks to submit the most accurate data as possible and to continue to develop the supporting processes. Also, given that the Federal Reserve has adopted processes to compensate for absent data (such as incomplete loan portfolio submissions) in the stress test by assuming higher loss rates than normally would be applicable, the banks are actively working to deploy the necessary resources to fill as many gaps in the submission process as possible.

Again, Regions is appreciative of this opportunity to comment on these proposals. The Company is supportive of the Federal Reserve's considerable efforts to strengthen the financial services industry but does have several concerns with the proposals as written. Regions believes that the effective date of the changes should be postponed. This will allow banks time to invest in people, processes and technology as well as test control frameworks that will increase the efficiency and effectiveness of the process. Moreover, it may allow more time for data requests to become more standardized and predictable. Regions does not believe that CFO attestation should be required. However, if the Federal Reserve decides to adopt such a requirement, the effective date should be delayed until the templates become more defined, and in any case, attestation should not be required for forecasted data. Regions looks forward to continuing to work with the Federal Reserve on these very important processes.

I am available should you have any questions regarding this letter.

Sincerely,

C. Matthew Lusco

C. Matthew Lusco

September 4, 2012

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

Re: Capital Assessments and Stress Testing information collection (OMB control number 7100 0341)

Dear Ms. Johnson:

The Clearing House Association L.L.C. ("**The Clearing House**")[1] the American Bankers Association[2] and The Financial Services Roundtable[3] (together, the "**Associations**") appreciate the opportunity to comment on the proposed revision to the Board of Governors of the Federal

[1] Established in 1853, The Clearing House is the oldest banking association and payments company in the U.S. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. *See* The Clearing House's web page at www.theclearinghouse.org.

[2] The American Bankers Association represents banks of all sizes and charters and is the voice of the nation's $14 trillion banking industry and its two million employees. Learn more at www.aba.com.

[3] The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine and account directly for $92.7 trillion in managed assets, $1.1 trillion in revenue, and 2.3 million jobs.

Reserve System's (the "**Federal Reserve**") report, *Capital Assessments and Stress Testing information collection* (the "**Proposal**").[4]

The Associations have consistently voiced strong support for ongoing regulatory reform efforts that aim to make financial systems safer and more robust. We support the Federal Reserve's efforts to help ensure that banks have appropriate risk measurement and management processes supporting their internal assessment of capital adequacy. However, there are certain aspects of the Proposal that cause the Associations concern. Those areas of concern include the appropriate set of rules that should be used for Basel III[5] projections for the upcoming Comprehensive Capital Analysis and Review ("**CCAR 2013**"), the new chief financial officer attestation requirement, confidentiality and legal reserves. In addition, in order to permit organizations to provide accurate and meaningful data submissions, there are a significant number of specific areas where additional clarification would be appreciated. These specific requests for clarification may be found in the Appendix to this letter.

I. <u>The Federal Reserve should confirm that bank holding company capital plans and the FR Y-14A Basel III/Dodd-Frank schedule for purposes of CCAR 2013 should be prepared (i) based upon the Proposed Rules in the Basel III NPR and the Advanced Approaches NPR but (ii) without regard to the Proposed Rules in the Standardized Approach NPR.</u>[6]

The Proposal assumes that banks subject to Section 225.8 of Regulation Y (the "**Capital Plan Rule**") will demonstrate their anticipated compliance with Basel III in their CCAR 2013 capital plans that are due on January 5, 2013, using the version of Basel III approved by the Basel Committee on Banking Supervision ("**BCBS**"), as opposed to the Proposed Rules on capital standards contained in three separate Notices of Proposed Rulemakings ("**NPRs**") by U.S. banking regulators. Banks subject to the Capital Plan Rule are particularly focused on their individual compliance with the Proposed Rules as they would come into effect in the U.S. on a fully-phased in basis beginning in 2019. Indeed, in their quarterly reports on Form 10-Q for the

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[4] 77 F.R. 40051 (July 6, 2012).

[5] Basel Committee on Banking Supervision ("**BCBS**"), *Basel III: A global regulatory framework for more resilient banks and banking systems* (Dec. 2010) (rev. June 2011) ("**Basel III**").

[6] Agencies, *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III – Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action*, 77 F.R. 52792 (Aug. 30, 2012) (the "**Basel III NPR**"); Agencies, *Regulatory Capital Rules – Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements*, 77 F.R. 52888 (Aug. 30, 2012) (the "**Standardized Approach NPR**"); Agencies, *Regulatory Capital Rule: Advanced Approaches Risk-Based Capital Rules; Market Risk Capital Rule*, 77 F.R. 52978 (Aug. 30, 2012) (the "**Advanced Approaches NPR**"). These notices of proposed rulemaking (the "NPRs") would revise the Agencies' capital rules to create an integrated set of rules. References in this letter to the "**Proposed Rules**", or to particular sections of the Proposed Rules, are to that integrated set of rules and related sections.

second quarter of 2012, many banks with more than $50 billion in consolidated total assets (and hence subject to the Capital Plan Rule) included disclosures addressing their respective paths to fully implemented compliance with the Proposed Rules in the Basel III NPR and Advanced Approaches NPR (some with a great deal of specificity, including by setting forth an estimate based on their understandings of the Basel III NPR and the Advanced Approaches NPR of their ratios of common equity Tier 1 ("**CET1**") to risk-weighted assets as of June 30, 2012). Consistent with prudent and forward-looking capital planning, senior management and boards of directors will need to consider the Basel III NPR and the Advanced Approaches NPR – both of which would implement the Basel III framework in the U.S. – in assessing their ability to satisfy Basel III rules in connection with CCAR 2013. While the Associations reserve the right to comment on the Proposed Rules, the Proposed Rules reflect the Federal Reserve's most recent view of how the Basel III framework is to be applied in the U.S. Accordingly, the Associations urge the Federal Reserve to confirm that mandatory Basel II[7] advanced approaches bank holding companies subject to the Capital Plan Rule should complete the Basel III/Dodd-Frank schedule ("Risk-Weighted Assets (A)" worksheet) for the baseline scenario and prepare their capital plans for CCAR 2013 based on the Proposed Rules as contained in the Basel III NPR and the Advanced Approaches NPR.

For those banks that are considered a non-mandatory advanced approach bank or opted-in voluntarily, we support the use of the "Risk-Weighted Assets (B)" worksheet for the baseline scenario that is based upon the existing Basel I[8] framework with adjustments for counterparty credit risk and does not take into account the Proposed Rules in the Standardized Approach NPR. We note that banks are much less familiar in evaluating the impact of the Standardized Approach rules on their capital positions and we believe the Standardized Approach Proposed Rules are likely to be amended more substantially than the Proposed Rules relating to the Advanced Approach.

II. <u>The new attestation requirements in the Proposal should be delayed until the relevant templates, instructions and definitions are finalized and, in any event, should not cover projected information.</u>

The revised FR Y-14 forms for the first time would include an attestation requirement. The form of attestation is identical to that used in a number of other financial reports filed with the Federal Reserve and other agencies that cover historical financial information, including the Federal Reserve's Form FR Y-9C and the Call Report forms (FFIEC 031 and 041). We strongly

[7] Agencies, *Risk-Based Capital Standards: Advanced Capital Adequacy Framework-Basel II; Final Rule*, 72 F.R. 69288 (December 7, 2007).
[8] See generally, 12 CFR part 3, appendix A, section III.

believe that no attestation should be required for the FR Y-14 series of forms in the near term. Over the longer term, if the Federal Reserve ultimately determines that an attestation is appropriate, it should be carefully crafted to reflect the type of information required, the time period that banks have to gather the information, and whether the scope of data required has been sufficiently settled for a period of time that permits banks to have established the infrastructure that normally would be established to accompany certifications by senior officers (CFO and CEO certifications under the Sarbanes-Oxley Act,[9] for example). In any event, we strongly believe that no certification should cover projected financial information.

The scope of the information covered by the FR Y-14 series is not settled. In view of the ongoing changes to the templates, instructions and definitions, there is considerable uncertainty regarding proper completion of the templates in accordance with all required instructions and definitions. Last year, for example, the Federal Reserve issued 175 Frequently Asked Questions ("**FAQs**") and we have appended to this letter a significant number of requests for clarification. When compared to other regulatory reports that require a certification such as the FR Y-9C and bank-level Call Reports, the FR Y-14 series is less well-established and currently includes more limited instructions.

Finally, if the Federal Reserve determines in due course that at some point some form of attestation should be provided for historical information, we believe it is essential that the form of attestation accommodate the fact that, given the enormous amount of information required, for some banks (and for different banks in different areas) there will almost certainly be missing or incomplete data for particular fields. In that event, we believe the Federal Reserve should permit banks to provide a limited or qualified certification in those circumstances (*i.e.*, is missing data considered an error, omission or normal course of business).

III. Several data requirements implicate foreign laws that potentially have criminal penalties.

Reporting identifiable client information raises concerns related to non-U.S. local laws that may restrict such reporting. For commercial clients for example, this includes bank secrecy law and blocking statutes in several jurisdictions. In addition, privacy and data protection laws are implicated when personally identifiable information is reported. We believe that required reporting needs to be adjusted for some jurisdictions to resolve such conflicts. In a few jurisdictions, data protection laws extend to information identifying legal entities, which could impact reporting on corporate or commercial clients.

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[9] H.R. 3763 (107th): Sarbanes-Oxley Act of 2002.

Bank secrecy requirements tend to apply to information related to customer relationships, including commercial customers in many instances. Sometimes these requirements apply only to a narrow set of data (*e.g.*, depository account information only), but that is not uniform. Customer consent can overcome the requirements in some jurisdictions, but this is not true across all jurisdictions, which reduces its value as a method to globally address bank secrecy concerns.

Where consent is recognized it typically must be revocable, which adds to its unreliability as an effective compliance measure. Data fields that may be impacted by these requirements could include identifiable customer loan balance or credit line information, for example, but could include any data that may be used to identify an individual or a legal entity. For example, the Cayman Islands, Greece, Romania, and Saudi Arabia have bank secrecy laws that may be implicated in providing information to U.S. regulators. [10]

Blocking statutes are in force in a handful of jurisdictions specifically prohibiting the sharing of information with any government other than the government of the home jurisdiction. These statutes often apply to information provided to courts or for investigations, but may also be interpreted more broadly. These prohibitions generally cannot be overcome by consent or other compliance steps.

Any data fields that reveal customer identifiable information may be impacted by blocking statutes. Jurisdictions such as Switzerland, China and France have active blocking statutes currently in place.[11] Non-compliance with these requirements and restrictions can have significant impacts, including fines, injunctive relief, private rights of action, revocations of financial services licenses and criminal penalties including imprisonment for corporate officers.

In addition to bank secrecy and blocking statutes, customer contracts may in some instances obligate reporting companies to very high levels of confidentiality which must be carefully considered in light of regulatory reporting requirements. During the July 15th conference call between the Federal Reserve, the Associations and member banks, the Federal Reserve raised a related question about whether there is a concern regarding the confidentiality of information that is reported to the government. Confidentiality and security of customer information is always of paramount concern to financial services institutions and we would welcome the Federal Reserve's insights as to its confidentiality and data security measures.

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[10] Argentina, Australia, Brazil, Chile, China, Costa Rica, France, India, Lebanon, Luxembourg, Netherlands, Panama, Philippines, Switzerland, Thailand, and Vietnam are among other jurisdictions with bank secrecy laws in place.
[11] Australia, Canada, Philippines and Vietnam are among the other jurisdictions with blocking statutes in place.

Other regulators have recently considered these issues. At times, mutual legal assistance treaties and other international agreements have been developed to provide frameworks within which non-U.S. information can be shared with the U.S. government for specific purposes. The Society for Worldwide Interbank Financial Telecommunication ("**SWIFT**") information sharing agreement is a recent example; the work currently underway to establish intergovernmental agreements related to the Foreign Account Tax Compliance Act ("**FATCA**") information reporting requirements is another.[12] An alternative could be to provide de-identified data in the reports, allowing companies to provide the information while also complying with local privacy, bank secrecy and blocking statute laws and regulations.

IV. <u>The Associations request that the Federal Reserve schedule periodic teleconference meetings to discuss recently issued guidance and make effective FAQ responses on or before December 15 of each year for the following year's Comprehensive Capital Analysis and Review ("CCAR") reporting.</u>

We appreciate the willingness of Federal Reserve staff to host a call on August 15, 2012 with the industry regarding the proposed changes to the FR Y-14. We also appreciate the availablity of the secure mailbox and related IntraLinks site to which banks were able to send questions related to CCAR last year. We note that it was the primary published source of guidance to clarify questions with respect to proper CCAR reporting. Based on the collective experience of banks reporting as part of the 2012 CCAR process, we respectfully offer the following suggestions to further improve the reporting process for 2013 CCAR reporting:

- *Offer regular, open teleconference meetings between interested banks and the Federal Reserve*. It was often difficult for an individual bank to interpret a written answer to a FAQ or the response did not completely address the particular facts and circumstances of an individual bank**.** Given the criticality of timing in receiving complete responses to items that may be unclear or require multiple questions, we recommend holding periodic, open teleconference meetings during which banks and Federal Reserve supervisors can engage in meaningful dialogue with respect to recently released FAQ responses or other issues of concern to banks or the Federal Reserve.

- *Make all new FAQ and other guidance provided on or before December 15 effective for the current CCAR reporting and all new FAQ and other guidance provided after December 15 effective for the CCAR reporting for the next year.* In order to ensure compliance with all of the requirements, there needs to be a "quiet period" when

[12] SWIFT provides a network that enables financial institutions worldwide to send and receive information about financial transactions in a secure, standardized and reliable environment.

no new guidance becomes effective.

V. **The Federal Reserve should incorporate our recommendations regarding further consideration of the “processed data option” and our preference for Method 4 proposed by the Federal Reserve (subject to resolution of the issues and concerns described in our August 6 Comment Letter) in addressing the Proposal’s requested disclosure of litigation reserves in the Pre-Provision Net Revenue (“PPNR”) projections and PPNR quarterly worksheet.**

The Associations previously have advised the Federal Reserve that disclosure of confidential litigation reserve information will threaten the safety and soundness of banking institutions in response to the Federal Reserve’s proposal originally issued on February 22, 2012[13] to require large bank holding companies to provide confidential, highly sensitive information relating to banks’ individual litigation reserves as part of the CCAR process.[14] As discussed therein, “disclosure of this information would be potentially very damaging to banks whenever they are defendants in litigation, irrespective of the merits of the claim, and thus inimical to the safety and soundness of banking institutions. Disclosure would also create fundamental unfairness for bank defendants, most clearly in the case of claims by the Federal Reserve itself and claims of other Governmental agencies, but also more broadly.” As we advised in the August 6 Comment Letter, we appreciate the Federal Reserve’s efforts to consider alternatives that would reduce risk to the banks. We also suggested that the Federal Reserve consider an additional “processed data alternative” to address its information collection needs while affording greater confidentiality protection for legal reserve information, and indicated our preference for Method 4 proposed by the Federal Reserve, subject to resolution of certain issues and concerns described further in the August 6 Comment Letter.

The Proposal’s requested disclosure in the Annual PPNR Projections worksheet and the Quarterly PPNR Submission worksheet concerning litigation reserves raise exactly the same concerns as those addressed in the August 6 Comment Letter. If the Federal Reserve believes that there is a compelling need as part of the Proposal to review the individual litigation reserves to determine capital adequacy, we strongly recommend that any resolution of this issue be consistent with and incorporate our recommendations regarding further consideration of the “processed data option” conclusion and our preference for Method 4, subject to resolution of the issues and concerns described in the August 6 Comment Letter.

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[13] 77 FR 10525 (February 22, 2012).
[14] *See, e.g.,* the joint trade comment letter, dated August 6, 2012, addressed to Jennifer J. Johnson [http://www.theclearinghouse.org/index.html?f=074184](the “**August 6 Comment Letter**”).

VI. <u>The Associations request that the Federal Reserve delay implementation of the new summary schedules, or alternatively provide guidance for banks that have missing or incomplete data.</u>

We note that the Proposal would substantially increase the number of required fields on the summary schedules. Several of these data elements requested are not incorporated into current regulatory reporting requirements and are not utilized by member banks for risk management purposes. Given that there are currently no third-party vendor systems that completely accommodate all of the reporting requirements of the Proposal, companies will need to significantly modify their reporting systems. These systems will need to be integrated with an entity's existing internal controls structure and fully tested before implementation is complete in order to permit an entity to make its required internal controls certifications. In the interim, it may be necessary to supplement existing information technology infrastructure with manual processes including manual review of thousands of paper files. In light of the volume and complexities of the new data requested by the Proposal, the Federal Reserve must allow for sufficient time to ensure that entities can implement the requirements in a way that allows them to produce reliable information that has been tested within the entity's internal control systems. Accordingly, we respectfully request that the Federal Reserve consider delaying implementation of the new summary schedules, or alternatively provide guidance for banks that have missing or incomplete data.

* * * *

We thank you for considering the comments provided in this letter. If you have any questions or are in need of any further information, please contact me at (212) 613-9883 (email: david.wagner@theclearinghouse.org), Michelle Hubertus at (212) 613-9804 (email: michelle.hubertus@theclearinghouse.org) or Hugh Carney at (202) 663-5324 (email: hcarney@aba.com).

Respectfully submitted,

David Wagner

David Wagner Senior Vice President
Finance Affairs
The Clearing House Association

Hugh C Carney

Hugh C. Carney
Senior Counsel II
American Bankers Association

Richard M. Whiting

Richard M. Whiting
Executive Director and General Counsel
Financial Services Roundtable

cc: Scott Alvarez, Esq.
General Counsel
Board of Governors of the Federal Reserve System

Michael S. Gibson
Division of Banking Supervision and Regulation
Board of Governors of the Federal Reserve System

Andrew Felton
Division of Banking Supervision and Regulation
Board of Governors of the Federal Reserve System

Lisa H. Ryu
Division of Banking Supervision & Regulation
Board of Governors of the Federal Reserve System

Benjamin W. McDonough
Senior Counsel
Board of Governors of the Federal Reserve System

Cynthia Ayouch
Federal Reserve Board Clearance Officer
Board of Governors of the Federal Reserve System

Joseph Peter
Supervising Examiner
Federal Reserve Bank of New York

Philip Gledhill
Supervising Examiner
Federal Reserve Bank of New York

Kenneth Lamar
Senior Vice President
Federal Reserve Bank of New York

H. Rodgin Cohen
Sullivan & Cromwell

Michelle Hubertus
Senior Vice President
The Clearing House Association

Appendix – Specific Requests for Clarification

A. General

1) Is there a standard format in which the Federal Reserve is requesting the information to be sent (e.g. Secured FTP, etc)?
2) Are the FR Y-14 files to be sent separately or in a single package?
3) Please confirm that banks will not have to provide any special quarterly or annual output for first lien 1 - 4 family closed end residential portfolio, or home equity loan and home equity line of credit portfolios.
4) How should banks handle investment RE loans secured by one or more single-family properties and business purpose loans primarily secured by one or more 1-4 family properties on the 1-4 family report? Neither is underwritten as nor fit the structure or risk characteristics of a typical consumer residential mortgage. Should banks (i) report the full loan on a single line using the largest collateral as the property address, or (ii) report the loan on the investment RE loans on CRE schedule and the owner-occupied business purpose loans on the C&I schedule?
5) Since the FR Y-14M/Q loan level submissions do not require the reporting of unearned income, should banks consider changing the way unearned income is reported by reporting unearned income on line 11, instead of on lines 1 through 10? This would seem to contribute to an easier reconciliation of the FR Y-14M/Qs to the FR Y-9C.
6) When acquired accounts with acquisition credit marks against them default, they are not treated as "charge-offs" from a U.S. GAAP perspective. Should they be counted as "charge-offs" on the individual schedules?

B. FRY-14Q Retail Risk

1) Is there guidance for use of alternative scores where the original FICO is not obtainable *(i.e.*, FICO rescores, alternative scores/rescores)?
2) Pertaining to "Small Business (Scored/Delinquency Managed)", please provide a clear definition as to what "Scored and/or Delinquency Managed" means. Is it intended that the Basel II definition, which is that Business relationships up to $1MM (or Euros) can or should be treated like Retail exposures, be used?
3) Is it possible to revise the Retail Risk schedule to remove data items no longer needed and add risk characteristics to existing collections? For example:
    a. Student Loans - It should be noted that Federal Consolidation Loans do not have a level of education (*e.g.*, grade level) assigned to them, given that they are comprised of several underlying loans with different respective grade levels. Since it doesn't seem appropriate to use "other", the template should allow loans to be assigned to an "N/A" category, as for older loans the requested information may not be available.
    b. Vintage Segment variable - As a result of this change, banks will need to consider the origination year in relation to the reporting year and make adjustments as time goes on. Was that intended?

C. FRY-14Q Supplemental Schedule

1) Please provide additional details and descriptions as to which portfolios and which details on the smaller portfolios would be required.
2) How should Column A for C&I / CRE loans less than $1mm be reported? Should it be left blank, or equal to Column D?
3) Please define what is meant by the term "carrying value" when reporting balances on the supplemental schedule. How does this compare to "principal balances" to be reported on the individual schedules? Note that while most of the portfolio and 1-4 schedules request the reporting of a customer balance, the CRE and

Corporate (Wholesale) schedules request the reporting of balances net of part sold amounts, charge-offs, interest paid to principal, 141R credit marks and SOP valuation adjustments.

4) Where should Consumer Leases (HC-C line 10.a) be reported? Appendix A does not cover this.
5) On Appendix A of the Supplemental Schedule, the definition for line 9.b.1 Domestic Small Business is "Domestic small business scored loans on line 4.a or 4.b of schedule HC-C of the FR Y-9C". Since line 4.b of HC-C is C&I non-U.S. addressee, does the "domestic" in the title of line 9.b.1 of the Supplemental Schedule mean "domestic office"? Likewise, Supplemental Schedule line 9.b.2 International Small Business is defined as "International small business scored loans on line 4.a or 4.b of schedule HC-C of the FR Y-9C". Since line 4.a of HC-C is C&I U.S. addressee, does the "international" in the title of line 9.b.2 of the Supplemental Schedule mean "non-domestic office"?
6) How should the differences in the Small Business Schedule and Lines 9b of the Supplemental schedule be reconciled? For example, the Small Business Schedule requests all "scored" or "delinquency managed" U.S. small business loans for which a commercial internal risk rating is not used or that uses a different scale than other corporate loans reported on lines 2.a, 2.b, 3, 4.a, 4.b, 7, 9.a, 9.b.1, 9.b.2, 10.b. The Supplemental Schedule requests domestic small business scored loans on line 4.a or 4.b of schedule HC-C of the FR Y-9C.

D. Questions Regarding FR Y-14Q MSR Schedule

1) The instructions (#2) state "Please provide the capitalization rate (multiple) and base mortgage rate on FNMA/FHLMC, Jumbo and GNMA 30 year products sold during the quarter into a current coupon MBS. Assume that the remittance cycle is Scheduled/Scheduled, taxes and insurance are escrowed, with FICO scores of 700, and LTV of 80%." It should be noted that loans are not today sold into a current coupon MBS, due to the very wide Primary/Secondary Spread. As a result, the Base Mortgage Rate (i.e., a rate that the borrower sees) may be 120 bps higher than the current coupon MBS. The instructions also state "sold during the quarter," but yet ask for a specified remittance, FICO and LTV. Is the loan to be considered a hypothetical loan with note rate = "base mortgage rate", Scheduled/Scheduled, escrowed, FICO 700 and LTV 80? Or should the loans actually capitalized that month be valued?
2) Does the base mortgage rate (#2) refer to the base rate used in the prepayment model or some other rate?
3) Regarding the valuation information (#3), please confirm that, if foreclosure timeframe between judicial and non-judicial is not tracked, an average over the portfolio may be assumed.
4) Regarding the MSR valuation sensitivity metrics (#4), what kind of "zero rate" assumption should be applied for a 100bp decrease shock? (Should a floor of 1bp for all yield curve points be assumed?)
5) Regarding the MSR valuation sensitivity metrics (#5), when the instructions ask for +/- 10% change in 3x10 implied swaption volatility, should all swaption volatility points be assumed to be changed by +/- 10%?
6) Regarding the MSR valuation sensitivity metrics (#5), when it asks for +500 basis points change in CDR/CPR/HPI, etc., should the respective vectors be shifted parallel by the basis point change?
7) A third option, "other," should be considered for hybrid methodologies that would be further explained in a comment or in supporting documentation.
8) We note that some banks could need to modify their existing MSR models because their existing valuation models may not factor in all sensitivity metrics or have an established process for reporting all proposed metrics as a model output. In order to responsibly develop and validate modified models in compliance with SR 11-7 (Guidance for Model Risk Management) as well as implement a new reporting process, is there an interim approach that may be taken? For example, the postponement of the FR Y-14Q MSR schedule implementation to a date no earlier than March 31, 2013 would ensure banking organizations have time to both enhance models and complete CCAR 2013. If the September 30, 2012 implementation date is maintained, could the reporting requirements for MSR valuation sensitivity metrics be phased in?
9) Is it possible to expand the instructions to ensure accurate data submissions? For example, the instructions do not provide a zero rate assumption for downward interest rate shocks. Similarly, the sensitivity metrics' instructions do not state the manner of performing shocks on CDR, CPR or HPI, detailing whether the respective vectors should shift in parallel by the basis point change or should be shocked in another manner.

E. FRY-14Q Trading Schedule

1) Corporate Credit Advanced and Emerging Tabs **-** On the sections for Indices, Index Tranches and Index Options, there is no place to put CDX that are not IG or HY (*i.e*., CDX EM). Is it possible to add a row for "CDX Other" in each section, similar to Itraxx Other, to capture all exposures?
2) Credit Correlation **-** The current instructions for allocating MV and Notional Long/Shorts are unclear for bespoke products where bespoke tranches overlap standard tranches. Is it possible to provide explicit rules for allocating exposures that span multiple detachment points to this bucketing method?
3) Credit correlation **-** The comment on row 55 refers to attachment point; should it refer to detachment point instead? Otherwise, do you want both the equity tranche and the 3%-6% tranche sensitivities placed in the 3% row in the template?
4) Credit correlation - For the purpose of mapping the notional and MV, should we use the current detachment point as opposed to the original?
5) Credit correlation - It is unclear how the various index families on the Credit Correlation worksheet align with those on the Corporate Credit worksheets. For example, the Correlation sheet has one section for XO and one for Itraxx. The Corporate Credit sheets have CDX XO, iTraxx XO and iTraxx Other. Would iTraxx XO go in the XO or the iTraxx section? Is it possible to provide consistent categories between this tab and the Corporate Credit tabs?
6) Sovereign Credit **-** Should the rates DV01 for Sovereign CDS and bonds denominated in non-local currencies be included in the template? Based on the instructions currently provided through an FAQ, only the DV01 for sovereign bonds issues in the same currency as the base currency of the issuing sovereign are reported in the template (on the Rates DV01 tab).
7) Other Fair Value Assets **-** The recent FAQ instructed banks to provide COLI/BOLI exposure on the Other Sector/Industry Line of this worksheet. Is it possible to have a separate category for COLI/BOLI to explicitly state how much of the exposure in that bucket is specifically COLI/BOLI?
8) Equity by Geography - Instructions on this tab read “Firms should keep the volatility surface fixed when applying spot shocks, i.e. the vega exposure with spot lower by 30%, for example, would be a function of skew." There does not appear to be a place on this tab for vega exposure where spot is lower by 30%. Please clarify what these instructions relate to on this tab.

F. FR Y-14A Basel III/Dodd-Frank

1) CRM surcharge is missing.
2) Substantial additional guidance also would be appreciated with respect to the Federal Reserve’s expectations (*e.g.*, assumptions, presentation) for projections beyond the 9-quarter planning period, as well as the manner in which such projections are taken into account in the Fed’s review of an institution’s capital plan.

G. FR Y-14A Summary Schedule – Income Statement/ Balance Sheet/ Retail Projections Worksheet

1) Has consideration been given to providing materiality rules for populating the loan loss and balance forecasts in the Income Statement, Balance Sheet, or Retail Balance and Loss Projections worksheets?
2) Income statement: Note that the ALLL forecast requested does not tie to FR Y-9C (delayed implementation). Is that intended?
3) Regarding losses on FVO loans on the Income Statement Worksheet, specifically mortgages, are banks expected to report a gross or net loss?

H. FR Y-14A Summary Schedule - Retail Repurchase Worksheet

1) Please confirm that for loans that have been paid-off or charged-off (old vintage loans), extractions from ESSBASE or annual reports can be utilized as a valid source related to original investor segmentation where data otherwise is unavailable.
2) A bank may not have the data necessary to detect the presence of MI to segregate the splits on Securitized Loans for accounts paid-off or charged-off. In such a case, how should this be handled in the segmentation related to Original UPB? Should all of this be included under MI or No-MI/ Securitized loans?
3) The template denotes loans sold either to Freddie and Fannie. If there is a sale from Whole Loans to Freddie or Fannie subsequently, please confirm if this should be reported in Freddie or Fannie balances or instead as Whole Loans.
4) Forecast and provisions are not set by the different agencies (Freddie vs. Fannie) for total GSEs. How should this be reported? Is a proxy weight acceptable?
5) Would a loan that has been liquidated (*i.e*., paid in full) be considered "settled" and part of the exempt population? Or does "settlement" only mean legal settlements stemming from repurchase/make-whole demands?
6) What is the proper reporting of loans that have been sold, repurchased and then sold again (e.g., due to documentation issues, or a loan migrating from performing to nonperforming and then back to performing status)? Would the same loan be reported as being sold in multiple vintages or just the initial year of sale?
7) What is the proper reporting if individual loan sale data is not available (*i.e.*, only aggregate loan sale data is available) going back to 2004, particularly in the more granular level requested?
8) The template asks for information regarding losses realized by the investor in the fields Net Credit Loss Realized to date and Estimated Lifetime Net Credit Losses. Losses that the investor takes on Non-repurchased loans are not tracked or visible to the banks.

I. FR Y-14A Summary Schedule – Balance Sheet

1) In the C&I Loan section, additional guidance is needed on the difference between C&I graded versus Small Business Scored.
2) In the Credit Card section, is a Charge Card a traditional credit card and a Bank Card an overdrawn bank account?

J. FR Y-14A Summary Schedule—Retail Balance and Loss projections Worksheet

1) What is the definition of Gross New Originations*?*
2) For total credit card accounts, should only active accounts be included or all accounts?
3) For total deposit accounts with Debit Card volumes, should only checking accounts be included, or should all types of accounts (checking, savings, money market & CDs) be included? Also, should data be provided only for accounts that are open?

K. FR Y-14A Summary Schedule - ASC 310-30 Worksheet

1) Given that the number of required fields has increased from 5 to 32, and that several of these newly requested fields are not required by U.S. GAAP or directly needed for risk management purposes, some banks may have difficulty providing all of the newly-requested data attributes by the filing date. How should a bank proceed if it does not have all of the information readily available? If a bank can produce the data attributes listed below, can implementation of the remaining items be delayed?

Template Item	Requested Attribute
1	Carry Value
2	Allowance
3	Net Carry Value
4	Provision to Allowance/(Reclassification to Accretable Yield)
5	Principal
7	Net Charge-offs to Allowance
8	Principal
9	Interest & Other
10	Other Changes to Allowance
14	Cash Flows Expected to be Collected over Remaining Life of Pool
15	Principal
16	Interest & Other
25	Accretable Yield Remaining
26	Accretable Yield Accreted to Income
30	Cash Expected to be Collected in Quarter
31	Principal
32	Interest & Other
New	Unpaid Principal Balance

2) Please confirm that the ASC 310-30 worksheet only applies to retail loans and no similar template or information is required for purchased credit impaired (PCI) commercial/wholesale loans. If not, what other loans are covered by the worksheet?

3) Please clarify if cash flow projections on PCI loans should A) be evaluated as of a current point in time (i.e., a single set of periodic cash flows throughout time) or B) reflect successive stages of the scenario over time (*i.e.*, a set of cash flow projections through the forecast period, recast at each quarter end).

   a. If A, please explain the intended methodology for completing forecast data points related to reclasses between accretable and nonaccretable difference, provision/reclass to accretable yield and effective yield (Items #4, #23, #27 and #29) since these would not change through time after the initial cash flow projection;

   b. If B, will the scenario provide information regarding how the economic conditions change throughout time so new cashflow projections can be created for each quarter? Additionally, has the Federal Reserve considered the significant operational effort required to execute multiple (up to 9) cash flow projections for each scenario?

4) Instructions for items #5-6, #8-9, and #15-16 state that cash flows should be broken out between principal and interest based upon contractual terms. Please explain the intended allocation based on contractual terms with respect to the following items:

a. Provision (Items #5-6). Should impairment be determined separately for principal and interest based on their respective cash flow streams? Or should the impairment be evaluated for the total cash flow stream with the breakdown determined through application of an allocation factor? Or another approach?
b. Net charge-offs (Items #8-9). P&I components of book basis are significantly different from contractually accrued P&I. Thus, how should contractual terms be considered? Additionally, if loans are part of a pool it is likely that no charge-off has been recorded to the allowance. If no charge-off has been recorded for a given pool, please confirm that they should be reported as zero.
c. Expected Cash Flows (Items #15-16).

5) Regarding the roll forward of the allowance provision component (Items #4-6), is the Reclassification to Accretable Yield intended to reflect recapture of previous impairment/provision? If so, when would this apply in an adverse scenario if economic conditions are deteriorating?
6) Instructions for items #11-13 state that amounts considered uncollectible that have already been absorbed by the NAD or charged off through the PCI allowance should not be included in the contractual cashflows. As charge-offs do not change a customer's contractual balance, should the periodic contractual payments be reduced through an allocation of charge-offs to each forecast period?
7) Row items 11-13: Do contractual cash flows include prepayments but assume no credit loss assumptions?
8) Row items 14-16: Please confirm that these cash flows should assume credit loss assumptions.
9) The output data requested is to be reported for all PCI assets and by lien type. Some banks have separate PCI cash flow valuations performed for different portfolios (such as PAP, non-PAP and Home Equity). In addition, they may have separate credit models used to project credit losses for these portfolios. Is this worksheet meant to be populated on a combined basis (for all three portfolios) or by each portfolio (such as a separate worksheet for each portfolio)?

L. FR Y-14A PPNR Schedule – PPNR Submission Worksheet

1) Guidance is needed as to the line of business segmentation of NII and Non-Interest Income (*i.e.*, clear direction on what the Retirement / Corporate Benefits Products segment is).
2) How should historical data be handled? Should historical data be restated or can it be reported "as-is" going back? Some lines of business structure changes occur over time. Is it required to restate and resubmit?
3) Where should non-client investment activity be included? In item (10) Corporate/other?
4) Where should public funds be included in the segment reporting? Item (7) Treasury Services?
5) Is it correct to assume lines 28 to 41 of non-interest expense need to be provided only for the total Bank Holding Company Expenses as shown on the schedule or is there a need to provide a non-interest expense breakdown by business segment similar to net interest income and non-interest expense in lines 1 to 27 of the schedule?
6) The instructions for Retail and Small Business and Lending Services specifies to "exclude any revenues related Wealth Management/Private Banking clients". Which line should these revenues be reported on?
7) In the Pre-Provision Net Revenue Schedule Instructions, lending revenue information must be separated between "small business banking" and "institutional entities of medium size". Further, the Instructions define "medium size" as "generally defined as those with annual sales between $10 million and $2 billion". Unfortunately, this definition may be too general as there are varying definitions of "medium" in the industry. For instance, Middle Market Banking typically includes clients with annual sales of at least $20 million, while Business Banking is frequently between $5 million and $20 million. Further, general ledgers do not categorize loans based on the size of the client. Rather, they are categorized based on client segments. These client segments may be split by client size (with differing thresholds as noted) or split based on product types (*e.g.*, dealer financial services includes commercial lending to auto dealerships and other auto relationships regardless of size). As such, the Instructions should not contain an actual definition or an implied definition (*i.e.*, implied through the use of the term "generally"). Companies should then be required to provide simple commentary on how they define small business banking and medium size institutions. Another way to

approach is to suggest that rather than saying "medium size and large size", "not already classified as small business banking" could be reported.

8) Marketing Expense/Credit Cards Line 36A: Should this metric include only direct marketing expense related to credit cards or also include allocated marketing expense? Can a more specific definition be given in the Instructions as to what the Federal Reserve considers applicable marketing expenses?
9) Retail and Small Business / Domestic / Credit Cards - Line 14D "Credit Card Rewards/Partner Sharing (contra-revenue)":

   a. Is this supposed to be purely domestic meaning domestic-only accounts and domestic transactions? Or should it also include any foreign revenue (*i.e*., FX transactions) related to domestic accounts? Same question for debit cards.
   b. Some rewards are contra-revenues against NII. Should this be exclusive of those? Or should it include the contra-NII and therefore it should be backed out of NII totals?
   c. Often these contra-revenues are shown net of related expenses, but there is also a category in the expense section. Should these then be exclusive of any related expense?

10) Retail and Small Business/Domestic/Mortgages and Home Equity - Line 14P "Provisions to Litigation Reserves / Liability to Sold Residential Mortgage Claims": This line currently reads as if the BHC is selling claims. However, if the Federal Reserve is looking for provisions for claims related to sold residential mortgages, the line should be recorded to "Provisions to Litigation Reserves/ Liability for Claims related to Sold Residential Mortgages" (same for Line 32).
11) Retail and Small Business / Domestic / Retail and Small Business Deposits - Line 14S "Debit Interchange – Gross": In light of the new breakouts for Credit Card and expenses, should this be truly Gross or exclusive of any related expenses?
12) Sales & Trading / Equities - Line 18C "Other": does this represent all Non-Interest Equities S&T revenue ex Prime Brokerage (which is on separate line), ex-Commissions & Fees (*i.e*., is this where trading profits and other non-interest, non commission revenue is inputted)?
13) Sales & Trading / Fixed Income - Line 18E "Rates" – does this include all underlying rates products even if it does not reside in a Rates line of business. For example, for DVA where the underlying product could be interest rate products, will that be part of Rates based on the new requirement?
14) Sales & Trading / Fixed Income - Line 18F "Credit" – please confirm this definition for all credit related products and not the Credit business alone (*i.e.*, credit related products to include Mortgage business, Distressed Debt/Loan, etc).

M. FR Y-14A PPNR Schedule – PPNR NII Worksheet

1) This question is in regard to the elimination of the "Primary" vs. "Supplementary" designation for Net Interest Income in the PPNR Projections (14-A) and Submission (14-Q) worksheets. In many cases, the segmentation of net interest income by business unit as defined for the FR Y-14 PPNR reporting differs significantly from the way in which earnings are measured for an institution's internal management reporting or external business segment reporting. Therefore, projecting net interest income under each scenario by business segment based on PPNR definitions requires development of new internal funding, crediting, and allocation assumptions which do not align with more recognizable institution specific business segment views. This method of deriving net interest income may not align well with the business segment profitability and risk measurement recognized by management, and is not likely consistent with the approach an institution uses to manage business unit balance sheets. Furthermore, with each institution using unique funding and crediting methodology which may or may not accurately represent the profitability of the PPNR defined segment, comparability is suspect. By eliminating the option for a "Supplementary" designation, the amount of detail (and methodology) required to be reported is increased for segments underneath Retail Small Business (*i.e.,* segments identified with a number and a letter) because these segments can no longer be reported on a net basis. These include Credit Card, Mortgages, Home Equity, Retail and Small Business Deposits, and Other

Retail and Small Business Lending. Please confirm whether the Federal Reserve will allow the designations "Primary" and "Supplementary" to be retained and not require more detail on either PPNR Net Interest Income section designated by an institution as "Supplementary". Please confirm that loans should be net of non-accruals.

2) For the additional requested items on the PPNR NII Worksheet, the yield calculations are based on income/expense for the period and, thus, the additional categories with the Average Rates Earned (%) section requires a re-calculation of the entire NII worksheet for all previously recorded periods. In light of the substantial work needed to complete the historical data required for the added line items, a delay should be provided that is similar to the implementation time-frame (December 15).
3) For asset categories where no FR Y-9C codes are provided, should definitions fall more closely in line with the Balance Sheet where line item definitions are more defined by FR Y-9C codes or in line with Retail and Wholesale instrument level reporting definitions? In particular, for the breakout of loans between Corporate/C&I loans, Small Business and Other Loans and Leases categories (involving FR Y-9C, HC-C lines items 2.a, 2.b, 3, 4.a, 4.b, 7, 9.a, 9.b.1, 9.b.2, 10.b); Auto Loans (involving FR Y-9C line items 6.c vs. 6.c and applicable leases in 10.a); and Credit Cards (involving FR Y9C line items 6.a vs. 6.a and applicable loans in 4.a).
4) Reporting differences will exist in FR Y-9C lines items reported for Commercial Real Estate (CRE) loans between the PPNR NII worksheet, the Balance Sheet and Instrument level definitions. For both PPNR and the Balance sheet FR Y-9C, HC-C line item 1.e.1 loans are included. The instrument level reporting definitions include these loans in Corporate Loans versus CRE loans. Is this intended?
5) HC-C line item 1.b. Loans secured by farmland (including farm residential and other Improvements), is not identified specifically in the Y-14Q instructions. Should these loans be reported in "Other Loans and Leases"?

N. FR Y-14A PPNR Schedule – PPNR Metrics Worksheet

1) What is the definition of the following item on the PPNR Metrics Worksheet (item 5): "Residential Mortgage Originations Market Size – Volume"? What is the geographical scope of the market (bank's regional footprint, U.S., or global)?
2) Retail and Small Business Segment/Domestic/Credit Cards/"Total Accounts" Line 1
    a. Please clarify what metric is required here – total new accounts, average active accounts, period-end open accounts?
    b. Should this metric include just credit card accounts or also include charge card accounts as included in the definition for the Revenue Components in the Instructions?
3) Retail and Small Business Segment-/-Domestic-/-Retail and Small Business Deposits-/"Total Accounts" Line 7
    a. Please clarify what metric is required here – total new accounts, average active accounts, period-end open accounts?
    b. Should this metric include just DDA or all "deposit" products (*i.e.*, money market savings, CDs, Savings, etc.)?
4) Does "Market Size – Volume", Line 7, refer to announced deals or completed deals?
5) Investment Banking Segment/Advisory/"Backlog" Line 16 - Please provide further guidance on how the Federal Reserve views backlog. Should it be based on total fee or probability weighted? Should this be an internal or market measurement?
6) Sales and Trading Segment/Prime Brokerage/"Total Revenue (incl. Net Interest Income)" Line 37 - Is this metric meant to be just the combination of PPNR Submission Worksheet Line 18K ("Prime Brokerage" Non Interest Income) and the portion of Line 5 ("Sales and Trading" Net Interest Income) that relates to Prime Brokerage?
7) Firm Wide Metrics/"Collateral Underlying Leases for Which the Bank is the Lessor" Lines 49, 49A, 49B
    a. For purposes of this form, what should the BHC include as a "Lease" - traditional lease definition only or also include financing leases?
    b. Are these metrics asking for the dollar value of the collateral underlying the leases or the dollar value of the leases that have underlying collateral?

8) Weighted Average Life/Footnote (4) - The weighted average life (WAL) metric adds "new business activity" to the definition. The disclosure asks for WAL at quarter-end, which should be interpreted as a spot balance sheet (excluding new business). Any new business for selected products should be incorporated in the annual submission (FRY-14A), where it specifically asks for forward-looking WAL.
9) Average Retail Deposit Repricing Beta in a 'Normal Environment'/"New Business Pricing for Time Deposits" Line 85
    a. Please provide a definition for the term "new business pricing"?
    b. Is the metric requesting information on the re-pricing beta only for downward rate movements?
    c. What does the term "curve" on the template refer to?
    d. The phrase "(if multiple terms assumed)" has been added; what does this refer to?

O. Operational Risk

1) In the Op Loss submission, should operational losses that are also credit losses be reported?
2) For items that may not specifically appear in the GL (*e.g.*, Workers Comp), should they be included since Basel specifically includes payment of personal injury claims as an operational loss under the Employment Practices and Workplace Safety category?
3) Operational Loss: Will the Federal Reserve again approve "best efforts" reporting (*e.g.*, Level 1 detail but not Level 2)?
4) For the FR Y-14A is the schedule looking for a summary breakout of the operational losses included in the scenario. It is also not completely clear how the Federal Reserve wants the type of data to be intersected with the UOM. For example, if a BHC looks at internal and external loss data, as well as operational risk scenario analysis, to derive a projection methodology, does that need to be linked on a dollar basis to the actual projection amount in a quarter/year? Will the Fed provide some additional detail on how those two columns intersect in breaking out the operational loss projections on this worksheet?

P. Questions regarding First Lien Closed-end 1 – 4 Family Residential Loan Collection Template

1) Please validate that first lien equity loans secured by 1-4 family residential real estate should be reported in the Federal Reserve's First Lien Closed-end 1-4 Family Residential Loan Schedule. When compared against FR Y-9C, Schedule HC-C, item 1.c.(2)(a), it is unclear whether first equities would be reported in this portfolio, or the Home Equity Loan and Home Equity Line of Credit Schedule.
2) Appraisal Amount – Original Property Value (Field #7) – May State Equalized Value (SEV) or Texas Assessed Value (TAV) for appraising a property be utilized for this field?
3) Original LTV (Field #8) – There are a number of accounts for which original LTV is not available. For these accounts, can current LTV ratios for these fields be used instead of NULL if there is current loan and value information available? If this field is reported as NULL, what value does the Fed use for modeling?
4) Debt to Income (Fields #11 and #12) – There are a number of accounts for which original DTI values are not available. For these accounts, can current DTI ratios for these fields be used instead of NULL if current income information is available? If this field is reported as NULL, what value does the Federal Reserve use for modeling?
5) Original FICO (Field #13) – There are a number of accounts for which original FICO information is not available. For these accounts, should current FICO be reported in this field instead of NULL?
6) Recourse Flag (Field #29) – Please provide a definition of "recourse".
7) Scheduled Principal Balance (Field #61) – In instances in which this field is not provided by a primary service provider, can the actual unpaid principal balance be reported?
8) Foreclosure Status (Field #68) - Why are the foreclosure status codes in the Home Equity Loan portfolio the same as the First Lien Closed End portfolio? There are only 3 status codes for HELOCs versus 4 for First Lien Closed-end Family Residential loans.

9) P & I Frequency (Field #46) – Some of the codes in this field are different from the P & I frequency field for the Home Equity Loan Portfolio (Field #41). As an example, a monthly payment is a '4' in the Home Equity specifications, but a '1' in the First Lien Closed-end specifications. Is it intended that these codes are different?
10) Refreshed CLTV Valuation (Field #74) – Can only LTV be provided in this field since these are all first liens?
11) Refreshed DTI Ratio (Fields #75 and #76) – Please provide definition of "front-end" vs. "back-end".
12) Active Repayment Plan (Field #79) – Description states to code as 1 for active repayments, but allowed values column states N and Y are the only valid codes. Please clarify whether to use Y or 1 for active repayments.
13) Active Repayment Plan (Field #79) – What does "performing" mean?
14) Active Repayment Plan (Field #79) – Please define "repayment plan". Does this include any kind of workout, or just a loan modification?
15) Delinquent Amount Capitalized (Field #85) – If the loan has not been modified, is 0 or NULL reported for this field?
16) Duration of Modification (Field #86) – If the loan has not been modified, is 0 or NULL reported for this field?
17) Step Modification Flag (Field #87) – If the loan has not been modified, is N or NULL reported for this field?
18) Net Recovery Amount (Field #99) – Does this only apply to REO status accounts Does "cost of sales" include commissions, pro-rated taxes, general closing costs?
19) Credit Enhanced Amount (Field #100) – Does this field only apply to REO accounts? Does this field include hazard insurance proceeds? Please describe the proper reporting when PMI insurance proceeds are not being received in a timely manner (sometimes months after the sale/liquidation of the property) from the insurance company.

Q. Questions Regarding 1-4 Family 2nd Lien and Home Equity Line of Credit Collection Template

1) Is setting ARM data for fields such as adjustable interest rate, margin, interest rate floor, ceiling, etc. for HELOCs even though they aren't technically ARMs (in reference to fields 27, 28, and 30 – 37) the correct usage of these fields?
2) Allowable Draw Period (Field #29) – For loans that are "Evergreen" in nature, in that there is no end date for the draw period, (although there is the ability to "call" these loans into the repayment period), should the draw period be set to 360 (maximum allowed per the Federal Reserve documentation) for these loans, or NULL?
3) ARM Periodic Rate Cap and Floor (Fields #32 & #33) – If periodic caps and floors data is not available (*i.e.*, only lifetime caps and floors data is available), should NULL be reported for these fields, or 0.0000?
4) ARM Periodic Pay Cap and Floor (Fields #36 & #37) – If periodic caps and floors data is not available (only lifetime caps and floors data is available), should NULL be reported for these fields, or 0.0000?
5) Original Loan Term (Field #38) - For loans that are "Evergreen" in nature, in that there is no end date for the draw period (although there is the ability to "call" these loans into the repayment period), should the draw period be set to 600 for these loans (maximum allowed per the Fed documentation), or NULL?
6) Loan Status (Field #50) – In the detailed description, it states that indicators of foreclosure, bankruptcy, and REO are reported in this field. However, the allowed values do not include any code for bankruptcies. Is there an additional code that should be utilized for bankruptcies in this field?
7) Principal Deferred (Field #64) – Description states to code as Y or zero, but allowed values column states N and Y are the only valid codes. Please clarify whether to use N or zero for loans that do not have principal deferred.
8) Locked Amount – Interest Only – LOC (Field #71) – How should lines of credit that allow amortizing lockouts, but do not allow interest-only lockouts, be reported in this field? Should NULL be reported in this field, or zero?

R. Questions regarding FR Y-14M Credit Card Schedule

1) Please confirm that only current month-end data each month, with no history, is required to be reported.
2) Related to the question immediately above, is any special quarterly or annual output for first lien 1 - 4 family closed-end residential portfolio or home equity loan and home equity line of credit portfolios required?
3) Can data provided by 3rd party vendors be reported at a portfolio level for these accounts?
4) For the FR Y-14M Reports, the file format for Commercial Cards -- *i.e.*, Pipe Delimited, XML, etc. is not available. Please advise on the required format for these files.
5) Credit Card Data Element #70 – Please provide an explanation of "Loss Sharing Agreement".

S. Other Data Collection

1) 14Q – Auto Schedule-- Is there a list the Federal Reserve can provide to determine the split between Vehicle Types: Car/Van, SUV/Truck, or Sport/Luxury/Convertible?
2) Personal Purpose Loans (PPL) – Please confirm that these are considered part of the consumer loan portfolio (and subsequent consumer report) even though they are handled through CLS.
3) If a mortgage is made in Dealer, does it fall under the umbrella of CRE or is it still part of Commercial?
4) On the Commercial Credit Card data elements document from the Federal Reserve, Field 31 is asking for the number of Authorized Users, but the numeric field only has one digit. Shouldn't this be more than one digit?
5) Please confirm that Equipment Leases are part of the required Commercial portfolio.
6) CRE data element requirements - Line 48 Fair Value Adjustment-- If the data is not available, please confirm that no reporting is required. If no reporting is required, should the field be left blank or include a zero?
7) Confirmation on Letters of Credit – Please confirm that reporting for LOCs is not required. If it is required, how should it be reported if most of the data is not available?
8) C&I data elements: Concerning the $1 million or greater committed loan balance, does this exclude a borrower with two notes of one-half million dollars each?
9) LEQ in the Supervisory Stress Testing method was empirically derived based on historical Shared National Credit data and calculated by comparing the funded loan level at the date of default and the funded loan level one year earlier. Will this methodology be used for the CapPR banks as well? The SNC data may be quite different than the bank's portfolio and could provide incorrect comparisons.
10) Credit Card Data Element #31 -- The description states *"Report total number of authorized users including primary obligors."* However, the field parameter is numeric, consisting of one character (N1). This appears to be either an error or missing a corresponding N1 selection criteria (*i.e.,* 1 = 0-100; 2 - 101-1,000, etc.). Please provide clarification on this data element.
11) Is an address file (census track information) required for Commercial Credit Cards? It's unclear in the current documentation if this is required -- presumably because it is a monthly report (FR Y-14M) it would be required, but in this case, the address is related to the affiliated business and not the cardholder. Please advise.
12) Are loans secured by owner occupied real estate (either directly or through an affiliated real estate holding company) reported as a "commercial" loan?
13) In the case of Letters of Credit, it doesn't appear that there is an applicable category for these items; in the case of PPLs used for Business, under the same premise it appears that these loans will need to be reported under Consumer Loans and Mortgages. To vary from either of these approaches it seems that Federal Reserve's Stress Test Reporting would be inconsistent with FR Y-9C reporting.
14) When reporting Letters of Credit in the commercial schedule, Field #20 (Credit Facility Type) allows identification of the item as a Standby Letter of Credit (code 15). Item 26 (FR -Y9C Integer Code) is a mandatory field where it is unclear as to how to report the Integer Code. In reading the instructions, they indicate *"Report the integer code (See Additional Instructions for descriptions). Only enter designated descriptions corresponding to the line number on the FR Y 9C, HC-C in which the outstanding balance is recorded or, in the case of an unused commitment, the line number in which the credit facility would be recorded if it were drawn."* While the items italicized are expressly addressed to "unused commitments",

which are different than letters of credit, the two elements have similar impacts (*e.g*., both are facilities where an obligation exists but no outstandings). Please confirm whether the Integer Code may be reported as if the letter of credit was drawn.

15) CRE Data Collection FR Y-14-Q**:** There are three fields that are only required if a reporting bank is in Basel II parallel per the FR-Y14Q CRE Schedule Instructions. Please advise if these are required for non-Basel II banks.

September 12, 2012

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

Re: Capital Assessments and Stress Testing information collection (OMB control number 7100 0341)

Dear Ms. Johnson:

The following questions were inadvertently omitted from the Appendix to our September 4 letter (attached) and should be treated as having been included in that submission.

If you have any questions or are in need of any further information, please contact me at (212) 613-9883 (email: david.wagner@theclearinghouse.org), Michelle Hubertus at (212) 613-9804 (email: michelle.hubertus@theclearinghouse.org) or Hugh Carney at (202) 663-5324 (email: hcarney@aba.com).

Respectfully submitted,

David Wagner
Senior Vice President Finance Affairs
The Clearing House Association

Hugh C. Carney
Senior Counsel II
American Bankers Association

Richard M. Whiting
Executive Director and General Counsel
Financial Services Roundtable

Appendix –Requests for Clarification

A. General Question

1) For all of the FR Y-14 M and FR Y-14 Q submissions, what is the record retention requirement? How long should the data be stored after submission?

B. Questions Regarding FR Y-14Q MSR Schedule

1) Is it possible to clarify if the Jumbo category is specifically meant for private investor securities with loan sizes >417K or any investor with loan sizes >417K?
2) In Valuation Information (#3), should default/foreclosure servicing cost for VA loans include expected write down (no-bid) losses?
3) In MSR valuation sensitivity metrics (#4), USDA guaranteed loans are not a product group. Is it possible to add an "other bucket" or clarify if USDA should be included within another category like FHA?
4) In MSR valuation sensitivity metrics (#4), are the CDR and CPR shocks for every period over the life or is there a specific duration to the shock, like next 12 months?
5) In MSR valuation sensitivity metrics (#4), specific CDR and CPR shocks of a fixed basis point are difficult to perform in some banks' valuation process. A multiplier to the current assumption is something that could be accomplished easily. Would the FRB consider a multiplier of say 10% higher, 100% higher or something like that instead of a fixed basis point change over some duration?
6) For some banks, in MSR valuation sensitivity metrics (#4), Independent HPI and UER shocks are not currently possible in their valuation as their assumptions have a mutual dependence (there is embedded correlation that cannot be removed). In such cases, can they use their model to define the change in HPI or EUR to pair with the specific HPI and UER shocks provided?
7) In MSR valuation sensitivity metrics (#4), do the HPI shocks have a specific duration like an instantaneous drop or is this a shift in the forecast HPI at every period for life?
8) In MSR valuation sensitivity metrics (#4), is it possible to have additional guidance as to the purpose of the 3m increase in foreclosure time frame (i.e. higher cost to service)?
9) In Detailed Valuation Information (#5), is it possible to specify if time dependent assumptions (i.e. CPR, CDR, Discount Rate, etc.) should be front period or lifetime?
10) In general, Sections #2 and #5 are very similar to the quarterly survey of information banks are required to provide to the OCC. Is it possible for the two Agencies to align their formats?

C. Questions Regarding FR Y-14Q Student Loan Schedule

1) Borrowers who have suffered a disability and/or death may have their debt forgiven and charged off. Per the FR Y-14 requirement, charge-offs are reported as either contractual (due to delinquency) or as a bankruptcy. How should forgiven loans be treated, since the loan was never delinquent and there is not a bankruptcy associated with the loan?
2) Average Original FICO of Borrowers: Is this a required Summary Variable? The field is currently not included in the scheduled instructions, but it was previously included on the Example Raw Data file. If the field is required, please confirm the following: definition of what information is required,

Variable Name, Data Type, and Format requirements. If this is required, please confirm how acquired loans should be reported- is the requirement to provide the Average Original FICO of Borrowers on acquired loans at the date of origination or as of the date of acquisition?

3) For loans that are acquired at a discount and thus treated as purchase credit impaired (PCI) loans, should the unpaid principal balance reported reflect the actual borrower unpaid principal loan balance or the discounted amount which would tie to our general ledger?
4) Additionally there are not any charge-offs or recoveries recorded on the general ledger for PCI loans. Any charge-offs on the acquired loans will be written off against the non-accretable difference. For FR Y-14 Q reporting should the total unpaid principal balance that was charged-off reflect the amount recorded on the general ledger or the amount actually charged-off as related to the PCI loans?

D. FR Y-14A Summary Schedule - ASC 310-30 Worksheet

1) The Retail ASC 310-30 worksheet includes a section (lines 4 – 10) for rolling forward any allowance associated with post acquisition impairments of PCI loans. Lines 4-10 appear to pertain to the difference between the original acquisition date projection and the current projection of **gross principal and interest cash flows**, but the allowance balance is measured and recorded based on the difference between the ***net present value*** of future cash flows and the carrying value of the PCI loans. Is it possible to clarify whether this section should include gross cash flow information (in which case, the "provision to allowance" section on lines 4 and 5 will not agree to the impairments recognized), or net present value information (in which case the "interest and other" cash flow information requested on lines 4 and 9 would include the impact of discounting to net present value)?

E. FRY-14Q Trading Worksheet Supporting Documentation Requirements

1) Documentation should provide a complete and technical definition of second and higher order risk factors (cross gamma, vanna, etc.) and describe the methods undertaken by the firm to estimate the cross gamma and higher order effects. Describe the degree to which these second and higher order risks (as defined above) explain losses.
   We note that describing the degree to which second and higher order risks explain losses will be difficult as all cross terms captured in full revaluation cannot be easily attributed separately, and will not be comparable to a sensitivity based approach.
2) Describe the evolution of risk per each risk area two weeks before and after the submission date, i.e. make note of positions that may expire or terminate within this time frame that significantly alters a risk profile.
   We note that given the time period allocated for CCAR, and the expectation that the stress would be run at two weeks before and after the as-of date (or weekly, or daily during that period), the documentation requirement would not be operationally possible because:
   - Re-running the stress three (five, or 28) times during the CCAR period would not be possible from a systems capacity or human resource standpoint.
   - As the as-of date is given in the past, it would not be possible to retro-actively capture the position information at the level of detail required to complete the exposure templates.

As an alternative, is it possible for each BHC to submit their already reported (BAU) stress testing results for the as-of date, and the two weeks before and after, so that the FRB can review any position trends/changes? Can the FRB provide more specific information on the level of detail required, and define a materiality threshold that indicates a significant alteration in the risk profile?

3) A detailed and technical description of modeling methods (including pricing models) used,
    - o Documentation should clearly make note of instances where different methodologies were used across different business lines with like assets.
    - o Document approach (full revaluation vs. grid based approach, e.g.) and asset coverage under these approaches,
    - o Please identify those products or exposures where the firm used models or systems that were outside of the normal routine stress testing framework for the FRB stress scenario and indicate if they were reviewed or validated by an independent Model Review function.

      This requirement would be extremely onerous. Is it acceptable instead to provide a link to a model database which includes all model technical documentation? In addition, in the cases where banks have had to change models or run the stress outside of the normal routine stress framework to successfully run the FRB scenario, the time period given for CCAR is too short to allow for independent Model Review approval. Can this be removed from the documentation requirements?

<u>F. Questions Regarding the FR Y-14M</u>

1) FR Y-14M schedules – FAQ #RTL125 states that the account- and loan-level data schedules should sum up to the portfolio level data. For the FR Y-14M Credit Card account level submission, the definitions state to report balances as of cycle-end, but for the portfolio level submission, the requirement is to report month-end balances. Cycle-end balances vary from the month end balances, therefore the account level will not sum to the portfolio level. Is this acceptable?
2) FR Y-14M Credit Card submission – field #42 Behavior Score: In the Data Dictionary, the required format for this field is shown to be 'N4'. Certain issuer behavior scores range from a negative value to a positive value and sometimes contain decimal points. How should these issuers report these values?
3) FR Y-14M Credit Card submission – fields #64 (Purchase Amount), #65 (Cash Advance Amount), and #66 (Balance Transfer Amount): The Data Dictionary instructions request to report the volume during the current month's cycle. How should these amounts be reported for accounts that do not cycle in the current month? Accounts may skip cycle if their cycle data changes to a date in the following month. Should issuers report the volume during the reported month, or report as blank/null?
4) FR Y-14M Credit Card submission – fields #48 (Minimum Payment Due) and #49 (Total Payment Due): Please clarify the difference between the two fields.
5) FR Y-14M First Lien Portfolio Level Reporting - Should the portfolio level dataset always report all four loan types, or should only the rows that are applicable for the current reporting period be reported?
6) FR Y-14M First Lien Loan Level submission - Field 15 (Credit Class) - How should FHA loans be classified? Should they be considered Government- Owned (option 4)? Also, can you please define what is meant by Prime?
7) FR Y-14M First Lien Loan Level submission - Field 22 (Mortgage Insurance coverage percent at origination) - Should FHA loans be included in this field?

8) FR Y-14M First Lien Loan Level submission - Field 39 (ARM Periodic Pay Cap) - How should the report be completed if there are no payment caps? Should it be report as Null?
9) FR Y-14M First Lien Loan Level submission - Field 40 (ARM Periodic Pay Floor) How should the report be completed if there are no payment floors. Should it be reported as Null?
10) FR Y-14M First Lien Loan Level submission - Field 66 (Repurchase Type) - Can you please further clarify what is meant by the Loan Repurchase Type options: (0) None, (1) In Process, (2) Complete & Repurchased, or (3) Complete and NO repurchase?

August 6, 2012

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW Washington, DC 20551

Re: FR Y–14A/Q/M OMB Control Number: 7100–0341. (Capital Plans; Proposed Agency Information Collection Activities)

Dear Ms. Johnson:

The Clearing House Association L.L.C., ("The Clearing House"), The Risk Management Association / The Advanced Measurement Approaches Group ("The RMA / AMAG"), The Financial Services Roundtable ("The Roundtable") and the American Bankers Association (the "ABA" and, together with The Clearing House, The RMA / AMAG and The Roundtable, the "Associations")[1] are writing to request reconsideration of the proposal (the "Original Proposal") by the Board of Governors of the Federal Reserve System (the "Federal Reserve") to require large bank holding companies to provide confidential, highly sensitive information relating to banks' individual litigation reserves to the Federal Reserve as part of the Comprehensive Capital Analysis and Review ("CCAR") process. For the reasons discussed below, disclosure of this information would be potentially very damaging to banks whenever they are defendants in litigation, irrespective of the merits of the claim, and thus inimical to the safety and soundness of banking institutions. Disclosure would also create fundamental unfairness for bank defendants, most clearly in the case of claims by the Federal Reserve itself and claims of other Governmental agencies, but also more broadly.

We are appreciative that the Federal Reserve has been willing to consider alternatives to the disclosure of individual litigation reserves. Following a discussion of the reasons why the Associations are so concerned about the Original Proposal, we set

[1] The Associations collectively represent financial institutions accounting for a substantial majority of banking and financial assets in the United States. Descriptions of the Associations are provided immediately following the signature page of this letter.

forth our views of the alternatives and, in particular, our preference for Method 4 proposed by the Federal Reserve, subject to resolution of certain issues and concerns, as outlined herein.

Concerns about the Original Proposal

We assume it is beyond dispute that an adverse party's knowledge of the amounts of a bank's reserves for individual litigation matters would be extremely detrimental to the bank's position in settlement negotiations. If a bank has reserved $X for a litigation matter, and that becomes known to the plaintiff, a settlement below $X becomes highly improbable. Indeed, if a plaintiff is made aware of a bank's reserve, that plaintiff may argue that it is a statement against interest or an admission of a party opponent and attempt to have the reserve amount introduced at trial (or at least before the court to influence its views). In short, once a reserve is known, the bank's ability to argue for damages below $X would be severely compromised. Accordingly, a bank that establishes its litigation reserves conscientiously and conservatively would place itself at a serious financial and competitive disadvantage if the amounts of the reserves became known.

This fundamental point can be illustrated by considering the imposition of a similar requirement on plaintiffs. Is it even imaginable that plaintiffs or their counsel would be required to provide their estimate of the anticipated value of a settlement? The obvious negative answer would be for the same reason as should apply to a defendant bank. The plaintiff's position would be severely compromised. How, then, can it possibly be reasonable to require that defendant banks alone provide this information?

We understand, of course, that the litigation information would be provided to the Federal Reserve on a confidential basis, and we are deeply appreciative of the Federal Reserve's strong record of maintaining the confidentiality of information that has been provided to it.[2] The problem, however, is that the Federal Reserve might be obligated to, or feel itself obligated to, release the litigation reserve information to others that have demonstrated less care in protecting confidential bank information. As just one recent, but telling, example, a Congressionally appointed commission, the Financial Crisis Inquiry Commission, included portions of confidential bank examination reports on its website.

We further understand that the Federal Reserve can give banks no assurance that it will not provide the litigation reserve information to Congress or other

[2] We are, however, concerned by a recent Federal Reserve determination to make disclosure of certain mortgage foreclosure information filed confidentially on the basis that it was "in the public interest".

Government authorities. In the absence of such assurance, banks would be placed at great risk.

A further significant concern arises from the necessarily substantial attorney input into the determination of litigation reserves. Without attempting to debate here the question of the banking agencies' authority to obtain from banks information protected by the attorney-client privilege, work product doctrine or similar protection, the banking agencies should proceed with caution in seeking such information and infringing upon those rights.[3] The agencies should not seek such information unless there is a compelling "need to know" and no available substitute.

The request for litigation reserves becomes particularly troubling when the reserves relate to litigation between the bank and the Federal Reserve itself or a potential enforcement action by the Federal Reserve against the bank. The bank would then be providing the Federal Reserve with the bank's own assessment of its vulnerability, thereby virtually destroying the bank's ability to defend itself. We submit that such a situation is profoundly unfair. This special problem is not limited to the Federal Reserve. If the bank is in litigation with, or under investigation by, another Government agency, and that agency obtains the bank's litigation reserve information from the Federal Reserve, the bank will be severely disadvantaged.

As we stated at the outset, we believe that disclosure of confidential litigation reserve information will threaten the safety and soundness of banking institutions. Litigation against banks has exploded in the wake of the financial crisis and government enforcement actions have multiplied. If banks are significantly handicapped in their ability to defend themselves, their additional losses could amount to billions of dollars. Perhaps even more damagingly, banks' reputation and credibility would be severely damaged as they are forced to settle claims far above their legitimate settlement value. In this respect, banks would be unique among all American businesses in their Government-imposed vulnerability to litigation.

<u>Concerns about the Original Proposal</u>

The remaining question is whether the potentially devastating impact of disclosure of individual litigation reserves is offset by a compelling "need to know". We recognize that the adequacy of litigation reserves may be relevant to the assessment of a bank's capital position in stressed circumstances. Nonetheless, we question whether there is a compelling need for the Federal Reserve to review the individual litigation

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[3] The attorney-client privilege is a bedrock common law protection, long regarded by the courts as a fundamental legal principle. *See Upjohn* v. *United States*, 449 U.S. 383, 389 (1981). Further, in *U.S.* v. *Deloitte*, 610 F.3d 129 (2010), the D.C. Circuit affirmed that work product protection extends to documents prepared in the course of determining appropriate litigation reserves, including audit documents where those documents contain the legal advice of counsel to the audit client.

reserves to make a capital adequacy determination. The bank examination process should provide the Federal Reserve with deep insight into the individual banks' processes for establishing litigation reserves. If those processes are unsatisfactory the Federal Reserve can model additional reserves to account for that inadequacy.

We also question the value of the information that the Federal Reserve would obtain from individual litigation reserves. That value is dependent on the Federal Reserve's ability to assess the adequacy of the individual reserves and substitute its own judgment for that of the bank. Not only is the judgment as to the appropriate litigation reserve level highly subjective, but it requires extensive knowledge of the case. With due respect, we believe that the Federal Reserve would not be in a position to make informed judgments about the adequacy of individual reserves. We also understand that the Federal Reserve may be seeking this information to be able to make judgments on a "horizontal" basis, comparing the levels of multiple banks' litigation reserves in seemingly similar cases. We believe that such a horizontal comparison is potentially highly misleading, as nominal similarities may mask profound differences in individual litigation matters. Even if the underlying claims are similar, there will inevitably be different facts and different levels of capacity and appetite to contest the claim.

Alternatives

As mentioned above, the Associations appreciate the Federal Reserve's efforts to develop alternatives that would reduce risk to the banks and we believe Method 4 has promise for the reasons set forth below. We also highlight below what we believe to be the critical deficiencies in the other Methods proposed by the Federal Reserve. Finally, we propose an additional method for your consideration that we believe may address the Federal Reserve's information collection needs while affording greater confidentiality protection for the legal reserve information.

Methods 1 & 5

These methods are similar in that they would require submission of legal reserve information on an event level basis with the actual amount of the reserve being part of the submission. Regardless of which method is employed to limit the disclosure of detailed descriptive information, providing reserve information with the actual loss amount would significantly jeopardize the bank's position. Therefore, we do not think that either of these two alternatives is acceptable.

Method 2

With this method, the Federal Reserve proposes to aggregate the information into a matrix by business line, event type, and time period. Although reserves are not submitted at the event level, there is a strong likelihood that the confidentiality of large individual reserves, or even small reserves, would be jeopardized. For many units within the matrix, firms would often have few, if any, legal reserve events. Even for firms with a number of reserve events in a particular unit, a series of data submissions over time would enable specific reserves to be calculated.

<u>Method 3</u>

In this method, the Federal Reserve attempts to limit disclosure of the actual amount of individual reserves through a randomization process, but we fail to understand the value that this information would provide to the Federal Reserve for its stated purposes. Short of attempting to reverse the randomization method, the only actual information is the number of the legal reserve events and the total amount at the time of submission. Given that, we think that Method 4 below is superior to Method 3.

<u>Method 4</u>

Of all the methods presented by the Federal Reserve, we believe this method is the most viable. However, some instruction details are missing which causes the concerns laid out below. We look forward to further clarification of the details of this method to address these concerns.

<u>Method 4 : Quarterly submission of the frequency data</u>

The Federal Reserve's instructions are detailed and clear. The example table lays out the structure in a transparent manner; however, the example data create the appearance of the existence of numerous legal reserve events at a single institution, which does not reflect the reality for most banks. Some institutions are concerned about the fact that at some point in time a given cell within the table could have a value of "1" and hence indicate that a reserve has been established for a given legal matter which – together with other information submitted and addressed below – could jeopardize the position of the bank as a defendant in litigation. Therefore, the combination of the frequency data submission with a specific method for submitting reserve amount information is critical to the viability of Method 4.

<u>Method 4 : Yearly submission of the Total Reserve Amount</u>

The details for the methodology to submit the total reserve amount are not clear. We assume that, in this method, if a reserve is established in one year and increased in a subsequent year, then the initial reserve amount would be reported for the year the reserve was established, and the amount of the increase would be attributed to the year the increase was recognized in the financial statements. For example, a bank may have established two reserves in 2010, Reserve 1 for $100 and Reserve 2 for $900. The legal reserve balance submitted pursuant to Method 4 would be $1,000. In 2011, Reserve 1 is increased by $100, while Reserve 2 remains unchanged. The legal reserve balance submitted for 2011 would be $1,100.

The following are our concerns with this method:

> By way of continuing submissions subsequent to the original data submission, if a bank has only very few reserves established in a given year, then the amount for a given reserve can be inferred from the total amount. This concern is most relevant if only a single reserve is established for a given year, or if very few reserves are established and this data set contains one significant reserve.

> Some banks voiced the concern that it would be difficult and sometimes impossible for a financial institution to provide precise historical data on legal reserves that may have been made many years ago. To those banks, it does not seem reasonable for the Federal Reserve to request that all legal events since the oldest reserve, potentially even those that were settled in the interim, be included in the initial report.

The following alternative is proposed: In the initial report submitted by a financial institution (using as a form the Example for Method 4), the first column under Number of Legal Events would be entitled “Total Events 2010” and would include a total figure (i.e., frequency) of all legal events for which a reserve had been established by, and was still in place at the end of 2010, regardless of the date of the establishment of the reserve. The remaining columns would reflect actual events that take place during the listed quarters, starting from Q1 2011. This would establish a baseline for the Federal Reserve of almost two years of data.

Another alternative would be for financial institutions to submit a report just like the Example of Method 4, and not include legal event numbers where the initial reserve occurred before 2010 and is still outstanding. In this approach the Legal Reserve Balance would include reserve dollars but the year when the reserve initially occurred would not be reflected in the form because it occurred before 2010.

> As legal cases get settled over time, the loss amount would become part of the “non-reserve” dataset for which the Federal Reserve has finalized the instructions earlier. This could result in the amount for a given event present in <u>both</u> the “non-reserve” data set (after settlement) as well as the previously submitted and not updated total reserve amounts for multiple years (before settlement).

Additional Proposal

In view of the issues presented by each of the five Federal Reserve alternatives (even Method 4), we suggest that the Federal Reserve give further consideration to the “processed data option” that is described by the Risk Management Association and its AMA Group in their May 24, 2012 Supplemental Response and elaborated upon in a separate August 6, 2012 2nd Supplemental Response. In essence, it appears similar to Method 4 (based on industry assumptions about the characteristics of Method 4), but would provide the industry added confidentiality benefits because it would apply to all data - reserve and non-reserve data – combined.

*****

We thank you for this opportunity to comment and for consideration of our views. If you have any questions or need further information, please contact (i) at The Clearing House, David Wagner, its Senior Vice President Finance Affairs (e-mail – david.wagner@theclearinghouse.org, telephone number – (212) 613-9883; (ii) at RMA / AMAG, Edward J. DeMarco, Jr., its General Counsel and Director of Operational Risk and Regulatory Relations (e-mail – edemarco@rmahq.org, telephone number – (215) 446-4052); (iii) at The Roundtable, Richard M. Whiting, its Executive Director and General Counsel (e-mail – Rich@fsround.org, telephone number – (202) 589-2413); and (iv) at ABA, Hugh Carney, its Senior Counsel (e-mail - hcarney@aba.com, telephone number – (202) 663-5324).

Respectfully submitted,

David Wagner
Senior Vice President
Finance Affairs
The Clearing House Association L.L.C.

Edward J. DeMarco, Jr.
General Counsel and
Director of Operational Risk and
Regulatory Relations
RMA / AMAG

Richard M. Whiting

Richard M. Whiting
Executive Director and General Counsel
Financial Services Roundtable

Hugh C Carney

Hugh Carney
Senior Counsel
The American Bankers Association

cc: Lisa H. Ryu
Assistant Director, Stress Testing
Division of Banking Supervision & Regulation
Federal Reserve Board of Governors

Benjamin W. McDonough
Senior Counsel
Federal Reserve Board of Governors

Andrew Felton
Banking Supervision and Regulation
Federal Reserve Board of Governors

Cynthia Ayouch
Federal Reserve Board Clearance Officer
Federal Reserve Board of Governors

Joseph Peter
Supervising Examiner
Federal Reserve Bank of New York

Philip Gledhill
Supervising Examiner
Federal Reserve Bank of New York

Kenneth Lamar
Senior Vice President
Federal Reserve Bank of New York

H. Rodgin Cohen
Sullivan & Cromwell

The Associations

The Clearing House Association

Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. See The Clearing House's web page at www.theclearinghouse.org.

The Risk Management Association / The Advanced Measurement Approaches Group

The Risk Management Association (RMA), a 501(c)(6) not-for-profit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, is a member-driven professional association serving the financial services industry. Its sole purpose is to advance the use of sound risk principles in the financial services industry. RMA promotes an enterprise approach to risk management that focuses on credit risk, market risk, operational risk, securities lending, and regulatory issues.

The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by RMA at the suggestion of the U.S. AMA-BQT (formerly the Inter-Agency Working Group on Operational Risk). The purpose of the AMAG is to share industry views on aspects of Advanced Measurement Approaches (AMA) implementation with the U.S. financial services federal regulatory agencies and promote the successful implementation of AMA. The Group consists of operational risk management professionals working at financial service organizations throughout the U.S.

The Financial Services Roundtable

The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine and account directly for $92.7 trillion in managed assets, $1.1 trillion in revenue, and 2.3 million jobs.

American Bankers Association

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation’s $14 trillion banking industry and its 2 million employees.

THE RISK MANAGEMENT ASSOCIATION
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August 6, 2012

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

AMAG 2nd Supplemental Response
2012 Agency Information Collection Activities
Operational Risk Data Reporting FR Y-14A/Q/M – OMB Nos. 7100-0341

Dear Ms. Johnson:

This letter and attachments comprise the second Supplemental Response from RMA's Advanced Measurement Approaches Group (AMAG)[1] on proposed changes to the operational risk aspects of Agency Information Collection Activities under FR Y-14A[2]. It should be read in conjunction with the AMAG's earlier responses dated April 23, 2012 and May 24, 2012, respectively.

The AMAG reiterates the positions and recommendations outlined in its April 23, 2012 and May 24, 2012, letters including, but not limited to, the members' objection to providing legal reserve data as part of the FR Y-14A/Q/M.

In its original proposal the Federal Reserve Board (FRB) requested that AMA banks submit operational risk loss data based on a new quarterly operational risk loss data collection template. The FRB's request encompassed all operational risk loss data, including reserves for **pending** litigation, because the reserves tend to have a significant impact on the measurement of operational risk. Among other concerns in our previous April 23, 2012 and May 24, 2012 letters, the AMAG highlighted the extremely

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[1] The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by the Risk Management Association (RMA) to share industry views on aspects of Advanced Measurement Approaches (AMA) implementation with the U.S. financial services federal regulatory agencies. The members of AMAG are listed in Attachment B to this letter. They are listed for identification purposes only. This letter and attachment do not necessarily represent the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the AMAG.

[2] Generally speaking, AMAG member firms understand and appreciate the regulatory community's interest and needs for collecting actual loss data. The Federal Reserve has stated its goals for the change as (1) assessing BHC's operational loss exposures in relation to the risks faced by them, (2) ensuring safety and soundness, (3) developing and calibrating supervisory stress test models, (4) evaluating the projections that BHCs submit as part of the FR Y-14A, and (5) supporting continuous monitoring and analysis of BHCs' operational loss activity and trends. Despite its support in concept, AMAG has concerns about some of the details of implementing this new proposal relative to FR Y-14A/Q submission requirements.

confidential and sensitive nature of the legal reserve data that would be required as part of quarterly submissions of operational risk loss data sets on the collection template, and explained why it would be inappropriate and potentially prejudicial, in the context of pending litigation, to include such information in these data sets.

Recent Dialogue with Regulators

Notwithstanding its objection to reporting such highly confidential and sensitive legal reserve information, the AMAG appreciates the opportunity to have engaged in a dialogue with the regulatory community about addressing this topic of reporting extremely sensitive information. Following the AMAG's April 23rd response, the Federal Reserve contacted The Risk Management Association (RMA), sponsor of the AMAG, for clarification of the Group's response on the question of including legal reserves in CCAR submissions.

The AMAG has also since participated with certain trade associations in teleconferences and meetings with the FRB. Notably, on July 16, 2012 representatives of the AMAG attended in person and participated by telephone in a meeting at the FRB in which three (3) FRB alternative Methods for reporting were discussed. At that meeting, the AMAG also had an opportunity to describe more fully its own two analytic alternative approaches outlined in our May 24, 2012 letter that should meet both the needs of the FRB and protect the confidentiality of these critical bank data. In light of that discussion, the AMAG believes that, in particular, one of the two approaches that we outlined in our May 24, 2012 has potential for further discussion and careful consideration as it would alleviate the AMAG members' concerns and further the interests of the FRB.

Analytic Alternatives

Following the July 16, 2012 meeting, the AMAG has also received brief descriptions of reporting Methods 4 and 5 as proposed by the FRB. Of these, Method 4 holds potential, subject to some modifications. For one, a reduction of the number of matrix cells (i.e., less granularity) would enhance protection of confidentiality (e.g., possibly collapsing the entire matrix to the aggregate bank level and submitting both legal reserve and all other data using this method). Also, reporting frequency data for periods in which reserves are established and increased would be a preferred approach, as opposed to reporting only one frequency entry when the reserve is first established.[3]

In the absence of these enhancements, however, the AMAG is using this Comment period to reiterate one of our two reporting alternatives outlined in our letter of May 24, 2012 (See Attachment A). The AMAG recognizes that these options are not without challenges for both banks and regulators. The AMAG stands ready, however, to work with the FRB to assess the merits and feasibility of its proposals in the spirit of satisfying U.S. banking agencies' need for insight into banks' operational risk exposures, while respecting the banks' and their stakeholders' own need for confidentiality of these critical data sets.

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[3] Note that the AMAG has participated with certain trade associations in developing detailed response commentary on the five reporting Methods offered by the FRB. See separate joint letter dated August 6, 2012.

Lastly, some AMAG members believe that banks should also be given the option of reporting such sensitive data either under one of the confidential reporting methods referenced herein, or reporting such data as it would all other operational risk data, if it so chooses.

Thank you, on behalf of AMAG, for the opportunity to continue a dialogue on possible solutions. The AMAG would be pleased to continue this discussion at your convenience.

Please contact us as appropriate.

Sincerely,

Robin L. Phillips
Chairman,
Advanced Measurement Approaches Group

Attachments

A – AMA Group Alternative Reporting Proposal
B -- About the AMA Group

Attachment A

AMA Group Alternative Reporting Proposal

Following is a restatement and elaboration of one of the two possible alternatives offered by AMAG in May 2012. It is included herein for further consideration and discussion.

AMAG Processed Data Alternative – *Provide "processed" rather than highly confidential "raw" loss reserve data*

Rather than provide the "raw" loss data to the FRB, AMA banks could provide "processed" data. Undoubtedly, the FRB has plans to use the raw loss event data within a modeling process. We assume that its end-to-end modeling process will include a series of analytical / quantitative tasks. Our proposal would be for AMA banks to perform some of the initial analytical / quantitative tasks and submit the output to the FRB. Then, the FRB could take this output and perform the remaining tasks to complete the modeling process and produce the final results.

It is difficult to determine the exact nature of the tasks to be performed by the AMA banks without knowledge of the FRB's modeling process. However, following are some examples on how this alternative approach could work based on some typical operational risk modeling processes.

Example A: LDA-type modeling, which focuses on determining parametric frequency and severity distributions using the empirical loss data.

- <u>Determining Frequency distribution parameters:</u> Loss amount information is not necessary for frequency modeling; therefore AMA banks could provide the number of loss event for each unit of measure without providing the loss amount. This information would not compromise the confidentiality of the reserve data and would not impede the FRB in modeling frequency of loss.

- <u>Determining Severity Distribution parameters:</u> Loss amount information is critical to determining severity distribution parameters. Therefore, the proposal would be for the FRB to provide the AMA banks with the specifications on how the loss data should be fitted. The AMA banks would be responsible for conducting the fitting process and submitting the results [i.e., fitted distribution parameters for each Unit of Measure (UOM)]. The loss amounts for individual events would not be submitted and the confidentiality of the reserve data would not be jeopardized. In addition, AMA banks could provide other statistics such as goodness-of-fit test results and other statistical properties of the empirical distribution (e.g., mean mode, median, variance).

Example B: Panel Regression analysis between Frequency of loss and macroeconomic factors (in line with the model used by the FRB for the recent CCAR analysis)

- This type of analysis would not require loss amount information as the regression analysis is performed against the frequency of loss. Therefore, AMA banks could submit the loss data without loss amounts.

- Once the number of losses for a given stress period is determined, the FRB would need some estimate of severity. In the recent CCAR analysis, the FRB used "sample averages by event type for each BHC" as the estimate of severity. The AMA banks could provide these statistics (along with other statistics) for each UOM without compromising the confidentiality of the reserve information.

This "Processed Data option" is similar in some respects to the FRB's Method 4 but with some additional important benefits. In fact, one could interpret the FRB's Method 4 as one example of "process data". A key difference, however, is that in the AMA bank-processed data alternative, the institutions could submit the Frequency matrix and the Total Loss Amount for a given period for all of the data (non-reserve losses and reserve losses). A second difference is that the level of "processing" would be less granular than that of FRB Method 4 (e.g., possibly collapsing the entire matrix to the aggregate bank level).

The benefits of submitting the information for all combined events would:

- Completely eliminate any potential for compromising the confidentiality of reserve information; and

- Remove the potential concern about "double counting" of losses when current reserves turn into actual settlements over time.

Furthermore, the AMAG alternative would allow the FRB to change the nature of the requested "processed data" over time. In this alternative, it is envisioned that the FRB would establish a set of processed data to be submitted, which could change over time (i.e., with appropriate amount of lead time, of course) as the FRB determines the need for a different set of information.

Notwithstanding members' objection to reporting any Legal Reserve data, and although the AMAG banks are conceptually supportive Method 4 as a possible option, banks are left to make a number of assumptions about FRB Method 4. Because of the difficulty of making such assumptions AMAG continues to believe that "the processed data" alternative should be given due consideration because it affords more long-term flexibility, is more protective of confidential nature of reserves, and potential less problematic to use in the FRB models.

Attachment B

About the AMA Group

The Advanced Measurement Approaches Group (AMAG) was formed in 2005 by the Risk Management Association (RMA) at the suggestion of the U.S. AMA-BQT (formerly the Inter-Agency Working Group on Operational Risk). The RMA is a member-driven professional association whose purpose is to advance the use of sound risk management principles in the financial services industry.

The purpose of the AMAG is to share industry views on aspects of Advanced Measurement Approaches (AMA) implementation with the U.S. financial services federal regulatory agencies. The Group consists of operational risk management professionals working at financial service organizations throughout the United States. The AMAG is open to any financial institution regulated in the United States that is either mandated, opting in, or considering opting in to AMA. A senior officer responsible for operational risk management serves as the primary representative of each member institution on the AMAG. Of the US financial service institutions that are currently viewed as mandatory or opt-in AMA institutions; nineteen were members of the AMAG at the time of this writing.

The members of AMAG are listed below. They are provided for identification purposes only. This paper does not necessarily represent the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the AMAG.

Bank of America / Merrill Lynch
Bank of the West
BMO Financial Group
BNY Mellon
Capital One Bank
Citizens Bank
Deutsche Bank
Goldman Sachs
HSBC
JP Morgan Chase
Keycorp
Morgan Stanley
Northern Trust
PNC
State Street Corporation
SunTrust
TD Bank Financial Group
Union Bank
Wells Fargo

Support for the AMAG is provided by RMA and Operational Risk Advisors LLC.

SunTrust

McHenry Kane
Vice President
Attorney

SunTrust Banks, Inc.
303 Peachtree Street, N.E.
Suite 3600
Atlanta, Ga. 30308
Tel 404.588.8627
Fax 404.230.5387
mchenry.kane@suntrust.com

August 6, 2012

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Attention: Comments
regs.comments@federalreserve.gov

Re: Comments to Proposed Rule OMB Control Number 7100-0341

Ladies and Gentlemen,

On behalf of SunTrust Banks, Inc. ("SunTrust") and many of its employees who have contributed to this analysis, I would like to take this opportunity to provide comments to the Board of Governors of the Federal Reserve System (the "Board") proposed rulemaking that requests comment on how the Board may collect information on litigation loss reserves from financial institutions, which proposed rule was published in the Federal Register on June 4, 2012 (the "Proposed Rule"). SunTrust presumes that the Board's interest in the information on litigation loss reserves is solely for the purpose of inputting the data into the Board's supervisory stress test models to more accurately forecast and better distinguish among institutions and SunTrust proposes herein an alternative that, SunTrust believes, best meets the competing needs of input for the Board's stress test modeling and maintaining the confidentiality of SunTrust's litigation loss reserves.

Issue

It is SunTrust's view that some background into our general concerns about sharing information about litigation loss reserves may provide some helpful context. Under Financial Account Standard No. 5 ("FAS 5"), a company must create a litigation loss reserve if (1) a loss is probable and (2) the amount of the expected loss is material and reasonably estimable. In the context of individual legal disputes, a determination that a loss is probable and estimable requires the subjective expertise of internal and/or external counsel familiar with the dispute, and inherently involves and reveals attorneys' assessments of anticipated trial and settlement strategies and of the strength and weaknesses of factual and legal defenses. For several compelling policy reasons, such assessments have long been protected from disclosure by law. As a result of this reality, disclosure of the existence and amount of a litigation loss reserve in a legal dispute can be extremely damaging to a company because it (a) reveals to an adversary significant information about the company's perception of the strength (or weakness) of its position, and (b) reveals to an adversary information that will dramatically impact any settlement, or potential for settlement, in the case. Indeed, it is hard to imagine a legal dispute ever settling for an amount less than the litigation reserve if this information is disclosed. In SunTrust's view, disclosure of litigation loss reserves to the Board may result in disclosure of this information to three sets of potential adversaries: (i) any litigation adversary who could obtain the information via a FOIA request or public disclosure by an agency or arm of the government to the extent the Board shared such information with other government agencies or arms of the government; (ii) a government agency, to the extent the Board shared litigation loss reserves with such government agency, either via a memorandum of understanding to share information or otherwise; and (iii) with the Board to the extent the Board is adverse to a financial institution disclosing the information to the Board.

Finally, SunTrust notes for the Board's consideration that, on average, SunTrust has approximately twelve (12) to twenty-four (24) matters with litigation loss reserves in excess of $100,000 at any time and it has been our experience that SunTrust typically adds only three (3) to six (6) new matters requiring a litigation loss reserve in any new quarter (noting also that the last 4 years in particular have been more litigious than other periods in the past, which may be attributable to the economic crisis). The relatively small number of total litigation reserves, and the even smaller period-to-period changes in the number and dollar amount of such reserves, makes efforts to address SunTrust's concerns about disclosure through aggregation and other techniques significantly more challenging.

Proposed Alternatives in the Proposed Rule

In light of the background above, it is more clearly understood why the three (3) alternatives set forth in the Proposed Rule fail to assuage the concerns SunTrust has about disclosing its litigation loss reserves to the Board. The first alternative would be to collect data on an aggregate level rather than a loss-event level and report the number of loss events broken out by line of business. While this approach has promise, we note (i) when the most important matters need to be reserved (and these are more rare than even the numbers described above, perhaps once (1) a year or every other year), the number generally dwarfs the other numbers in the total and, because of the sometimes highly public nature of important matters, very obvious even when aggregated in the total, and (ii) the examples of matrices SunTrust has seen as examples for reporting loss events are very detailed with as many as eighteen (18) different fields in which a loss event can be reported. As previously stated, because there are so few matters reserved at any one time and so many fields into which these matters are to be categorized, SunTrust would anticipate most of the fields would either contain zeros (0s) or ones (1s). Since the reporting would be done on a quarterly basis, it would be very easy to spot when a field that previously reported a zero (0) changes to report a one (1) and if the field corresponds to a field in which it is publicly known there is a very important lawsuit being defended or a controversy with regulators it would be very easy to infer whether or not a loss reserve has been taken in that matter. If the matter is an extremely important matter and the amount in controversy significant, it could also be the case that the aggregate amount of the loss reserve reported would jump significantly. Again, because the reporting is done on a quarterly basis, noting both the change of the reporting of a loss event from a zero (0) to a one (1) and a significant increase in the aggregate loss reserve an opponent could infer not only whether SunTrust considers a loss to be probable in a case but the amount of that loss. A further concern about this alternative arises if the loss event is related to an investigation by the Board or an action by the Department of Justice or the Consumer Financial Protection Board and the Board shares this report with those agencies. In such instances, it is easy to understand the concern that disclosure of litigation reserve information would seriously undermine due process of law and fundamental fairness if a financial institution is compelled to disclose this information about an active controversy to its adversary in that controversy.

The second and third alternatives, that data be collected on legal reserves in an anonymous fashion such that neither the identity of the financial institution or the loss event be known or submitting actual and randomized data, is interesting but raises certain questions. While ideally SunTrust would like information to collected such that no opponent would be able to link the information back to SunTrust and determine whether (a) a loss reserve has been taken or (b) the amount of that reserve, it is not clear (i) how this can be accomplished or (ii) how not being able to determine to which financial institution certain loss reserves can be attributed advances the Board's goal of using the data as input into the Board's models to stress test specific institutions. If the thought is that the Board could take the data from all the institutions to whom the rule applies, determine an average or mode of aggregate loss reserves and use that number in all of its models as a predetermined filler for all institutions, the idea has some merit; however, that approach raises questions such as (a) how would the Board determine whether all institutions actually submitted data to the Board for compliance purposes if the submission is truly anonymous and (b) how would an institution submit such data without some trail leading the data back to them? SunTrust has no answers to these questions, but would be open to any suggestions that might solve these difficult issues.

<u>SunTrust Proposed Alternative</u>

In a call held among the Board, banking industry groups and certain financial institutions on July 24, 2012, and subsequently in writing, two additional alternatives were set forth by the Board which included (i) submitting on a quarterly basis the number of loss reserve events, but only submitting once annually an aggregate dollar amount of total litigation loss reserves and (ii) combining all operational loss elements on the same reporting matrices (intermingled with litigation loss reserves) and not reporting any distinctions between litigation loss reserves and other operational losses. These additional alternatives both address different concerns SunTrust has with respect to disclosing litigation loss reserves. The first alternative mitigates the sequential nature of reporting amounts by reducing reporting to an annual basis. This makes inferring the amount of any particular reserve more difficult because the connection of a zero (0) changing to a one (1) and any jump in the amount of the reserve is less obvious because jumps in reserves could occur at any time during the preceding three (3) quarters. However, because the matrices SunTrust has seen as examples are so specific and the number of legal events SunTrust would typically report so small, it would still be evident from quarter to quarter if and when a litigation loss reserve is taken (a zero (0) moving to a one (1)) in a public matter. Moreover, because of the relatively small number of events involved, it still may be possible in some instances to associate a large increase in the annually-disclosed aggregate dollar amount of litigation reserves with a particular matter with a reasonable degree of confidence.

The second alternative better masks the changes and number of loss reserves by co-mingling litigation loss reserves with other operational loss events. SunTrust's concern with this alternative, however, is that it involves reporting the amount of each loss event separately. This is a concern because operational losses generally are relatively small in amount compared to litigation loss reserves and, as a result, disclosure in this manner will not effectively mask large litigation loss reserves because those events will be obvious due to the significant difference in size between them and the events that surround them.

Of the five (5) alternatives proposed by the Board to date, SunTrust believes that alternative 4 has the most potential. As noted, however, SunTrust believes that alternative 4 still carries an unacceptable risk of disclosure of highly sensitive litigation reserve information. This risk can be further mitigated by supplementing alternative 4 with a concept found in alternative 5. Specifically, SunTrust proposes amending alternative 4 to include both litigation loss reserves and other operational loss events. In this proposal, an institution would populate a chart showing the combined number of litigation reserves and loss events, by category, and would disclose annually the aggregate dollar amount of the reserves and other operational loss events. This proposal retains the benefits of alternative 4 but mitigates the risk arising from the small number of litigation loss reserves by ensuring there would be fewer zeros (0s) and ones (1s). SunTrust also believes that this solution would provide the data input required by the Board to the same extent the other alternatives suggested by the Board would; however, SunTrust would be interested in understanding the Board's position on the matter in case SunTrust has missed the mark.

Please do not hesitate to contact me directly with any questions or comments you may have about this letter.

Regards,

McHenry Kane

Cc: Ray Fortin
Brian Edwards
Jim Sproull

Defending Liberty
Pursuing Justice

Wm. T. (Bill) Robinson III
President

AMERICAN BAR ASSOCIATION

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5109
Fax: (312) 988-5100
abapresident@americanbar.org

July 31, 2012

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Federal Reserve System Proposed Agency Information Collection Activities; Comment Request; FR Y-14A/Q/M; OMB Control Numbers: 7100-0341 and 7100-0319; 77 Fed. Reg. 10525 (February 22, 2012)

Dear Ms. Johnson:

On behalf of the American Bar Association ("ABA"), which has nearly 400,000 members, I write to express our serious concerns regarding the above-referenced proposed changes to the Comprehensive Capital Analysis and Review data collection schedules ("Proposal") to the extent that it would require bank holding companies to report their legal reserves for pending and probable litigation claims to the Board of Governors of the Federal Reserve System ("Board").[1]

Although the ABA appreciates the Board's efforts to gather additional data regarding the operational loss exposures of bank holding companies and hence preserve the safety and soundness of our banking system, the ABA is concerned that the new requirements contained in the Proposal could weaken fundamental attorney-client privilege and work product protections, undermine the confidential lawyer-client relationship and the right to effective counsel, and severely prejudice banks in defending against lawsuits. The ABA therefore urges the Board to withdraw that portion of the Proposal requiring enhanced disclosure of legal reserves.

The attorney-client privilege is a bedrock legal principle that enables individual and organizational clients to communicate with their lawyers in confidence and encourages clients to seek out and obtain guidance to conform their conduct to the law. The privilege also facilitates self-investigation into past conduct to identify shortcomings and remedy problems, to the benefit of society at large. The work product doctrine underpins our adversarial justice system and allows lawyers to prepare for litigation without fear that their work product and mental impressions will be revealed to adversaries,

[1] These ABA comments were prepared in coordination with the ABA Task Force on Financial Markets Regulatory Reform. The ABA Task Force is comprised of 15 prominent financial services lawyers who have served in the top levels of government and private practice. The Task Force includes former general counsels of the Securities and Exchange Commission ("SEC"), the Federal Deposit Insurance Corporation, and the Treasury Department, as well as members and liaisons who have held high-level positions with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the SEC. Also included on the Task Force is a founder of Public Citizen Litigation Group and leading academics in the law relating to financial entities and administrative law. The complete Task Force roster is available at: http://apps.americanbar.org/buslaw/committees/CL116000pub/materials/publicroster.pdf

to the detriment of their clients. The ABA strongly supports the preservation of the attorney-client privilege and the work product doctrine and opposes governmental policies, practices and procedures that have the effect of eroding these protections.[2]

The Proposal would place both the attorney-client privilege and the work product doctrine in serious jeopardy by requiring banks to collect and disclose new quarterly loss data, including the type of loss event, when it occurred, the loss amount, the business line in which it occurred, and other relevant information.[3] As you know, banks and other companies establish their legal reserves for litigation claims in close consultation with their lawyers. Because those consultations almost always involve confidential communications between the client and the lawyer, as well as extensive legal analysis and the exercise of professional judgment by the lawyer in weighing the relative strengths of claims and defenses, the resulting legal reserve determinations are inherently privileged and work product protected. Therefore, requiring banks to report this privileged information to the Board, and the possibility that it later could be disclosed to other third parties, could seriously undermine and weaken the privilege, because as the U.S. Supreme Court has noted, "an uncertain privilege… is little better than no privilege at all." *Upjohn Co. v. United States,* 449 U.S. 383, 393 (1981).

The Board's Proposal also threatens to seriously undermine both the confidential lawyer-client relationship and the banks' fundamental right to counsel. Lawyers for banks play an essential role in helping them and their leaders understand and comply with applicable law and, when necessary, represent the entities in litigation. To fulfill this important societal role, lawyers must enjoy the trust and confidence of the entity's officers, directors, and other leaders and must be provided with all relevant information in an open and uninhibited manner. Only in this way can the lawyer engage in a full and frank discussion of the relevant legal issues with the client's representatives and provide appropriate legal advice and assistance to the client.

By requiring banks to submit privileged and confidential legal reserves information to the Board, the Proposal risks chilling and seriously undermining the confidential lawyer-client relationship. Lawyers and their bank clients alike may lose confidence that their private communications and the lawyers' professional analysis, judgment, and advice will remain confidential. Even the risk that these confidential communications and the lawyer's mental impressions and advice may be subject to compelled disclosure would be likely to affect the willingness of bank clients to be fully candid with their lawyers and could have an adverse effect on lawyers' willingness to provide expert counsel to banks. In addition, such possible disclosure could discourage banks from seeking and obtaining the expert legal representation that they may need, thereby interfering in a substantial way with their fundamental right to counsel.

The ABA also is concerned that the Proposal could severely prejudice the banks' legal positions in pending and probable litigation matters. Any requirement that banks report detailed information concerning their legal reserves to the Board could harm the banks' position in litigation by informing their adversaries of how the banks and their lawyers weigh the strengths and weaknesses of the subject claims. In many cases, the new legal reserves disclosures could establish a de facto floor for the plaintiffs' settlement demands on those claims or, in some cases, a plaintiff could seek to introduce the legal reserves disclosures as a bank's "admission" of its liability or the amount of

[2] *See* ABA Resolution 111, adopted by the ABA House of Delegates in August 2005, available at http://www.americanbar.org/content/dam/aba/directories/policy/2005_am_111.authcheckdam.pdf.
[3] *See* Proposal, 77 Fed. Reg. at 10528.

damages. Such a result would not only be patently unfair to the bank client, but it also would undermine the safety and soundness of our financial system by making banks less able to defend themselves in litigation, as well as further undermining the right to effective counsel and our nation's adversarial system of justice.

Although the Board recently published a notice in the Federal Register finalizing most of its Proposal, it acknowledged some of the concerns raised by various commenters regarding the new proposed disclosure requirements. In particular, the Board noted the commenters' concerns that:

> …the Federal Reserve may not be able to guarantee the confidentiality of the information in all cases; the data could become discoverable in third-party litigation; and should the information make its way into the public domain, it could significantly jeopardize the BHC's [bank holding companies'] position in litigation.[4]

To its credit, the Board also conceded that based on those comments and its subsequent discussions with the commenters, "the Federal Reserve's preliminary view is that these concerns are justified."[5]

The ABA shares these concerns that privileged and confidential legal reserves information submitted to the Board may not remain confidential, which in turn could waive the privilege as to third parties and severely prejudice the legal position of banks in litigation. We also share the concerns that have been raised regarding the difficulty the Board and other bank regulators could face in resisting future congressional attempts to obtain the data, which could further increase the risk of public disclosure and hence result in waiver of attorney-client privilege and work product protections as to all third parties.

For all these reasons, the ABA respectfully requests that the Board withdraw the Proposal to the extent it would require banks to report their legal reserves for pending and probable litigation claims. The ABA also urges the Board to continue its constructive dialogue with the legal profession, the banking community, and other stakeholders in order to craft new data collection procedures that would protect the safety and soundness of the banking system while preserving the attorney-client privilege, the work product doctrine, and the confidential lawyer-client relationship.

Thank you for considering the views of the ABA on these important issues. If you have any questions regarding the ABA's position on the Proposal, please contact ABA Governmental Affairs Director Thomas Susman at (202) 662-1765 or Associate Director Larson Frisby at (202) 662-1098.

Sincerely,

Wm. T. (Bill) Robinson III

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[4] *See* Federal Reserve System, "Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB with Request for Comments," 77 Fed. Reg. 32970, 32973 (June 4, 2012)
[5] *Id.* In that Announcement and a subsequent notice published on June 27, 2012, the Board extended the comment deadline on the remainder of the Proposal until August 6, 2012. *See* 77 Fed. Reg. 38289 (June 27, 2012).

cc: The Honorable Tim Johnson, Chairman, Senate Banking, Housing and Urban Affairs Committee
The Honorable Richard C. Shelby, Ranking Member, Senate Banking, Housing and Urban Affairs Committee
The Honorable Spencer Bachus, Chairman, House Financial Services Committee
The Honorable Barney Frank, Ranking Member, House Financial Services Committee
The Honorable Lamar Smith, Chairman, House Judiciary Committee
The Honorable John Conyers, Jr., Ranking Member, House Judiciary Committee
Members of the ABA Task Force on Financial Markets Regulatory Reform
Thomas M. Susman, Director, ABA Governmental Affairs Office