TIAA CREF
FINANCIAL SERVICES FOR THE GREATER GOOD™

Teachers Insurance and Annuity Association of America
College Retirement Equities Fund
730 Third Avenue
New York, NY 10017-3206
212.490.9000 800.842.2733

Brandon Becker
EVP, Chief Legal Officer
Advocacy & Oversight
212.916.4750
212. 916.6231 fax
brandonbecker@tiaa-cref.org

May 23, 2011

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

Re: Docket No. OP-1416 – Notice of Intent to Apply Certain Supervisory Guidance to Savings and Loan Holding Companies

Dear Ms. Johnson:

TIAA-CREF writes to comment on the Notice issued by the Board of Governors of the Federal Reserve System ("Board") on April 22, 2011 regarding the Board's intent to apply certain supervisory guidance to savings and loan holding companies ("SLHCs"), Notice of Intent to Apply Certain Supervisory Guidance to Savings and Loan Holding Companies ("Notice").[1] We appreciate the opportunity to participate in the discussion of how the Board intends to implement the new supervisory authority over SLHCs that it received under Section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA"). This letter supplements the letter we submitted to the Board dated April 11, 2011 regarding the Board's prior notice of intent to subject SLHCs to various regulatory reporting requirements ("April 11 Letter") and echoes many of the themes we addressed in the April 11 Letter (a copy of which is attached, as Exhibit A).

I. Background

TIAA-CREF is a leading provider of retirement services in the academic, research, medical and cultural fields managing retirement assets on behalf of 3.7 million participants at more than 15,000 institutions nationwide. TIAA-CREF is an organization comprised of several distinct corporate entities whose overall assets under management or administration total $477

[1] 76 FR 22662 (Apr. 22, 2011).

billion.[2] Teachers Insurance and Annuity Association of America ("TIAA") is a life insurance company domiciled in the State of New York which operates on a not-for-profit basis with general account assets of $216 billion. TIAA is a wholly-owned subsidiary of the TIAA Board of Overseers, a special purpose New York not-for-profit corporation. Based on their indirect ownership of TIAA-CREF Trust Company, FSB (total assets $331 million), TIAA and the TIAA Board of Overseers are registered as SLHCs under the Home Owners' Loan Act ("HOLA") and currently are supervised by the Office of Thrift Supervision ("OTS"). The College Retirement Equity Fund ("CREF") issues variable annuities and is an investment company registered with the Securities and Exchange Commission ("SEC") under the Investment Company Act of 1940. TIAA-CREF also sponsors a family of equity and fixed-income mutual funds. TIAA-CREF's mission is "to aid and strengthen" the institutions we serve and provide financial products that best meet their specific needs. Our retirement plans offer a range of options to help meet the retirement plan administration obligations of institutions and the savings goals and income and wealth protection needs of individuals.

II. Need to differentiate supervision of SLHCs

In the Notice, the Board states its belief that "it is important that any company that owns and operates a depository institution be held to appropriate standards of capitalization, liquidity, and risk management consistent with the principles of safety and soundness." We understand this position in light of the supervisory concern that a SLHC be able to act as a "source of strength" for its subsidiary thrift. Each of these elements directly relates to a SLHC's ability to act in such capacity: (i) capitalization – does the SLHC have capital that can be injected into the subsidiary thrift; (ii) liquidity – does the SLHC have liquid funds to make such a capital injection; and (iii) risk management – will the SLHC stay in business to provide a capital injection. To the extent the Board's supervisory program focuses on these micro-prudential goals utilizing appropriate metrics for the SLHC's activities, we believe such an approach is aligned with the goals of Section 10 of HOLA as amended by DFA.

We are troubled by the Board's statement that this approach is not only "consistent" with HOLA but "essential to executing its supervisory responsibilities under the Dodd-Frank Act." DFA amended Section 10(b) of HOLA to add as a goal of examining SLHCs informing the Board of threats to "the stability of the financial system of the United States." The threats posed by SLHCs to the stability of the financial system, however, are very different than those posed by bank holding companies ("BHCs") and we urge the Board to differentiate SLHCs from BHCs when requesting information and or initiating discovery reviews intended to identify threats to financial stability. Without such differentiation, such activities could lead to increased burdens on SLHCs without a commensurate macro-prudential benefit. The largest BHCs are engaged heavily in many of the financial activities identified by Congress as posing significant risks to the financial system, including: (a) acting as primary dealers, (b) acting as derivatives and swaps dealers, (c) managing payment and clearing systems, (d) providing and conducting prime brokerage activities, (e) sponsoring, underwriting and dealing in structured products, and (f) various other market making and underwriting activities. SLHCs historically have not been

[2] All financial information as of March 31, 2011.

significant participants in such activities and should not be supervised in the same manner as internationally active BHCs solely based on asset size.

Congress in drafting the DFA did not make SLHCs with consolidated assets of $50 billion or more automatically subject to: (a) the heightened prudential standards of DFA Section 115, (b) enhanced reporting requirements under DFA Section 116, or (c) the restrictions of DFA Section 121, as is the case for all BHCs with $50 billion or more in consolidated assets. Instead, SLHCs only are subjected to such requirements upon designation under Section 113 of DFA by a supermajority vote of the Financial Stability Oversight Council. Under DFA, Congress determined that not all SLHCs pose the same degree of risk to the financial system as do the largest BHCs. The majority of SLHCs that could be characterized as large and complex under the Board's intended approach are grandfathered under Section 10(c)(9)(C) of HOLA and, accordingly, are not subject to the activity restrictions of the Bank Holding Company Act ("BHCA"). Much of the Board's existing BHC supervisory program is targeted at policing the activity restrictions set forth in Section 4 of the BHCA and is, therefore, inapplicable to grandfathered SLHCs.

It is important for the Board to articulate and communicate clearly both internally and externally the goals of its SLHC supervisory program. Monitoring compliance with the activity restrictions of Section 4 of the BHCA, which is an important goal of the Board's BHC supervisory program, should not be a goal for supervising grandfathered SLHCs, while compliance with restrictions on transactions with affiliates, the qualified thrift lender test and tying restrictions are clearly within the scope of areas the Board needs to address.

III. Need to address appropriate model for Board supervision of insurance companies

The Board's existing supervisory program does not adequately consider the business of insurance. The BHC Supervision Manual addresses insurance primarily with regard to: (a) requirements for a BHC to obtain insurance,[3] (b) underwriting insurance related to credit,[4] and (c) insurance agencies and consumer protections regarding insurance sales.[5] The OTS Holding Company Supervision Manual, on the other hand, specifically addresses insurance company holding companies and state regulation of insurance.[6] As was discussed in the April 11 Letter, we believe the Board's bank-centric approach should be modified in the case of insurance companies. In this regard, we find the tone expressed in the Notice by the Board of using its existing approach "to the greatest extent possible" risks creating a culture of jamming square pegs into round holes that is inconsistent with the DFA. Moreover, we are concerned that the Board is proposing an approach that may be putting illusory efficiency in administration ahead of appropriateness of supervision. Indeed, we believe using a bank-centric model for insurance company SLHC oversight ultimately will prove less effective than a more tailored model.

---

[3] BHC Supervision Manual Section 2060.5.

[4] BHC Supervision Manual Section 3180. See Regulation Y – Credit Insurance (12 CFR 225.28(b)(11)(i)).

[5] BHC Supervision Manual Sections 3170 and 3950, respectively.

[6] OTS Holding Company Supervision Manual Section 930.

Again, as we discussed in the April 11 Letter, Congress set the standard for the Board by stating the Board should rely to the "greatest extent possible" on supervision by other state and federal functional regulators.[7] The Notice, SR 00-13(SUP) and Section 3900 of the BHC Supervision Manual generally assume that SLHCs are not themselves functionally regulated by state or federal functional regulators. In contrast, however, insurance company SLHCs are directly supervised by state functional regulators. We believe in this context it is particularly important that the Board coordinate with state insurance regulators to the fullest extent possible, to avoid duplication of examination activities and requests for information from a single legal entity. Similarly, the overlap of jurisdiction between the Board and state insurance supervisors creates a risk of insurance company SLHCs being subject to potentially conflicting supervisory expectations and demands. We strongly support efforts by the Board to work with state insurance supervisors to coordinate and harmonize supervision of insurance company SLHCs.

The Board's existing BHC and Financial Holding Company ("FHC") supervisory programs have the stated objective of "ensuring the holding company does not threaten the viability of its depository institution subsidiaries."[8] In the context of many of the insurance company SLHCs, the banking assets of their thrift subsidiaries represent a very small percentage of the consolidated assets and corresponding risk concentrations. Similarly, in many cases thrift capital represents a very small percentage of consolidated SLHC capital. This situation is in dramatic contrast to most BHCs and FHCs and supports a more focused micro-prudential supervisory approach, rather than a broad and intrusive program that is not related to the thrift's potential need for support from the SLHC.

Non-public insurance companies that are SLHCs do not fit the structural paradigm developed for public BHCs. They often utilize different governance and ownership structures and do not intend to convert to public ownership. Many SLHCs developed with a special history of mutual, fraternal and charitable ownership that it is important for the Board to respect and protect. We understand that such ownership structures pose supervisory challenges and concerns, especially with regard to limitations on their ability to access the capital markets, but we would urge the Board to consider the risk mitigation activities and conservative management actions taken in response to this constraint. Academic research demonstrates that non-public ownership encourages companies to operate with reduced appetite for risk and higher levels of capital.[9] As discussed below, while mutual and other non-public insurance companies have limited ability to raise common equity, they have demonstrated that they are able to raise capital through other means, such as the issuance of surplus notes.

---

[7] See Appendix A – Senate Report 111-76 – discussion of section 604.

[8] BHC Supervision Manual Section 390.0.2.

[9] See J. Lamm-Tennant and L. Starks, *Stock versus Mutual Ownership Structures: The Risk Implications*, 66 Journal of Business, 29 (1993); S. Harrington and G. Niehaus, *Capital Structure Decisions in the Insurance Industry: Stocks versus Mutuals*, 21 Journal of Financial Services Research,145 (Feb.-Apr. 2002); S. Lee, D. Mayers and C. Smith, *Guaranty funds and risk-taking: Evidence from the insurance industry*, 44 Journal of Financial Economics, 3 (Apr. 1997).

We reiterate our arguments that the Board should continue the OTS's policy of accepting financial statements and information from non-public insurance company SLHCs prepared consistent with statutory accounting principles ("SAP") for supervisory purposes. As we discussed in the April 11 Letter, SAP is a conservative approach for presenting an insurance company's financial condition specifically designed to address insurance supervisors' needs. We would note that the Financial Accounting Standards Board ("FASB") and the International Accounting Standards Board recently released an update on their efforts to achieve international accounting convergence between U.S. Generally Accepted Accounting Principles ("GAAP") and International Financial Reporting Standards ("IFRS") and noted progress on several issues that would have a significant impact on insurance companies.[10] In light of this uncertainty regarding accounting standards for insurance companies, the Board should avoid imposing requirements (e.g., GAAP reporting) that would cause SLHCs to develop processes and systems of financial reporting that likely will need to be changed in the near future.

As we discuss below, imposing the Basel capital regime on insurance companies also presents significant challenges in the case of SLHCs that are or own insurance companies.

In addition, we fear that the risk management practices of large complex internationally active BHCs will become de facto "best practices" imposed on SLHCs through the supervision process without a clear understanding of the differing risk profile of SLHCs and, in particular, the different risks faced by insurance companies that are SLHCs. While banks primarily are funded through short-term financing activities such as deposits and certificates of deposit, insurance companies raise the funds they invest by taking on risk related to property and casualty exposure and mortality. While banks model liquidity needs based on interest rate exposure, insurance companies model liquidity based on conservatively modeled probabilities of claims unrelated to the capital markets – such as miles driven for auto insurance or based on morbidity and mortality risk for insurance and annuities. Similarly, BHCs are engaged in many trading and market making activities that expose them to short-term market risk, while insurance companies invest for the long-term and are exposed to actuarial risks related to individual longevity and/or the probability of catastrophic events occurring. The risk management practices appropriate for a BHC trading desk engaged in market making in the foreign exchange market are not necessarily appropriate for a SLHC trading desk engaged in long only purchases of corporate bonds for an insurance company's general account. One size fits all risk management standards clearly are inappropriate for entities facing such differing types of risks and the Board's supervisory program should reflect and respect these differences. Indeed, as former Governor Olson stated, "[a]n effective enterprise-wide compliance-risk management program is flexible to respond to change, and it is tailored to an organization's corporate strategies, business activities, and external environment."[11]

---

[10] See FASB April 21, 2011 press release available at: http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB/FASBContent_C/NewsPage&cid=1176158460171

[11] Governor Mark W. Olson, speech at the Fiduciary and Investment Risk Management Association's Twentieth Anniversary Training Conference, Washington, D.C. (Apr. 10, 2006).

IV. Significant additional burden

We believe that the Board's consolidated supervision program will entail significantly more intensive and onerous supervision than does the existing OTS program. Whether this increased burden is appropriate depends on the approach taken by Board and Federal Reserve Bank supervisory personnel. Our primary concern is that examiners are likely, absent Board direction, to fall into a one-size fits all, checklist approach to SLHC supervision. It is vital that the Board make sure that examiners focus on material risks and not just those risks that they have experience in identifying and reviewing in banks and BHCs.

V. Responses to specific questions raised in the Notice

1. The burden of these potential modifications to supervisory activities on SLHCs.

Although as a practical matter, the burden of supervision for SLHCs may increase under the Board's approach outlined in the Notice, there is nothing in the legislative record indicating that Congress intended SLHCs be treated as BHCs. Indeed, to the extent Congress addressed the issue, it specifically rejected a uniform, bank-centric approach.

In the Notice, the Board states that it "does not believe that application of its BHC consolidated supervision program to SLHCs would require any specific action on the part of SLHCs prior to the transfer date or cause undue burden on an ongoing basis." We find this statement to be unrealistic given the significant change in regulatory structure and approach occurring on the transfer date. As the Board is aware, regulatory and reputational risk related to failure to meet regulatory expectations are key areas a well-designed Enterprise Risk Management ("ERM") program needs to address. The Board, through the Notice, has signaled its intent to impose new regulatory expectations on SLHCs. Accordingly, SLHCs' ERM programs already are changing to address the Board's de facto supervisory standards. We urge the Board to communicate clearly that there will be a transition period during which the Board as a supervisor seeks to learn more about the activities of SLHCs before imposing changes on SLHCs' activities and practices under its broad authority under HOLA and DFA.

2. Whether there are any unique characteristics, risks, or specific activities of SLHCs that should be taken into account when evaluating which supervisory program should be applied to SLHCs and what changes would be required to accommodate these unique characteristics.

The Board needs to modify its bank-centric approach to supervision to take into account the differing risks posed by SLHCs' non-banking activities. The business of insurance is fundamentally different than the business of banking with many risks measured in terms of lifetimes or probability of natural disasters rather than days, months or market volatility. We stress again that company size is only one element in determining the appropriate supervisory program and that the Board should undertake a detailed analysis of a SLHC's activities and risk profile in determining the appropriate supervisory program.

As we discussed in the April 11 Letter, separate accounts of insurance companies pose several issues that need to be taken into account in developing the supervisory program for SLHCs that are, or own, insurance companies. We believe the Board should view separate accounts of insurance companies as functionally equivalent to investment management accounts or collective investment funds maintained by a bank's fiduciary department. To the extent that the insurance company does not bear the risk of investment loss for the separate accounts,[12] its separate accounts should receive the same treatment under the Board's capital adequacy standards as bank fiduciary accounts, including common trust funds and collective funds established pursuant to the Comptroller of the Currency's fiduciary regulations.[13] As required by Section 171 of DFA (the "Collins Amendment"), such treatment would be consistent with the existing leverage and risk-based capital standards applicable to banks. Both a bank trust department and an insurance company's separate accounts have legal title to assets, yet statutory restrictions in both cases maintain a legal separation of these assets from the assets available to satisfy the general creditors of the insurer or bank.[14] Accordingly, separate account assets of an insurance company generally should be excluded from both a SLHC's leverage and risk-based capital ratio calculations.

3. What instruments that are currently includable in SLHCs' regulatory capital would be either excluded from regulatory capital or more strictly limited under Basel III?

We are concerned that the Basel III prudential framework, that was developed to address issues faced by the banking sector and in particular large internationally active banks, is now going to be the framework used to measure the capital adequacy and liquidity of insurance companies. We recognize that the Board is mandated by the Collins Amendment to apply bank-like leverage and risk-based capital standards to all SLHCs, and we strongly support the Board's recent efforts to do so in a manner that recognizes the special characteristics of the business of insurance. In this regard, we would like to raise the issue of the appropriate treatment for surplus notes issued by insurance companies.

For example, under Section 1307 of the New York State Insurance Law, a New York domiciled insurance company may, upon the approval of the New York Superintendent of Insurance ("Superintendent"), issue surplus notes.[15] The special characteristics of surplus notes

---

[12] To the extent that an insurance company takes on the risk of investment loss, the separate account assets related to such guarantee should be treated as collateral to the insurer's general account obligation and risk-weighted accordingly.

[13] 12 CFR 9.18.

[14] See New York Law Insurance Law § 4240 ("If and to the extent so provided in the applicable agreements, the assets in a separate account shall not be chargeable with liabilities arising out of any other business of the insurer"). Which is in effect parallel to the treatment of fiduciary assets of a bank under 12 U.S.C. § 1464(n)(2) ("A Federal savings association exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association").

[15] New York Insurance Law § 1307 provides: (a) Any domestic stock, mutual or co-operative insurance company or reciprocal insurer may, without pledging any of its assets, receive advances or borrow funds to: [...]
(2) enable it to comply with any surplus requirement or make good any impairment or deficiency or other requirement of this chapter, [...]

include: (a) they are unsecured; (b) they are not subject to set-off; (c) they are not included as legal liabilities of the insurer; and (d) all interest and principal payments must be made out of free and divisible surplus of the insurer and may only be made with the prior written approval of the Superintendent. We believe that surplus notes are consistent with the "Criteria for inclusion in Tier 1 Additional Going Concern Capital" laid out in paragraph 88 of the Basel Committee's Consultative Document.[16] In particular, we would note that the Basel Committee explicitly recognized the need for the Basel III regime to "accommodate the specific needs of non-joint stock companies, such as mutuals and cooperatives, which are unable to issue common stock."[17] This public policy goal is echoed in the DFA's legislative history regarding the Board's authority to issue capital regulations under HOLA.[18] Surplus notes are an effective means for mutual, fraternal and other non-public insurance companies to raise capital.

a. How prevalent is the issuance of such instruments?

We understand that since 1995 there have been approximately 54 public issues[19] of surplus notes for a total of $21.4 billion. Notable recent issuers include: TIAA - $2 billion (12/2009), Northwestern Mutual - $1.75 billion (3/2010), Pacific Life - $1 billion (6/2009), New York Life - $1 billion (10/2009), MassMutual - $700 million (5/2009), Nationwide - $700 million (8/2009), Guardian Life - $400 million (10/2009), Mutual of Omaha - $300 million (10/2010), National Life - $250 million (9/2009) and Penn Mutual - $200 million (6/2010).

b. Please comment on the appropriateness of the Basel III transitional arrangements for non-qualifying regulatory capital instruments.

---

(4) provide any fund to be voluntarily contributed to surplus, [...]

(b) Such borrowing may only be made upon an agreement that such moneys and such interest thereon as may be agreed upon [...] shall be repaid only out of free and divisible surplus of such insurer with the approval of the superintendent whenever, in his judgment, the financial condition of such insurer warrants. In the event of insolvency of a mutual or co-operative insurance company unearned premiums shall be deemed to be part of its free and divisible surplus.

(c) Any sum so advanced or borrowed shall not be part of the legal liabilities of such insurer and shall not be a basis of any set-off but until repaid all statements published by such insurer or filed with the superintendent shall show, as a footnote, the amount then remaining unpaid.

(d) No such insurance company or reciprocal insurer shall directly or indirectly make any agreement for any advance or borrowing pursuant to this section unless such agreement is in writing and shall have been approved by the superintendent as not unfair, misleading or contrary to law. [emphasis added]

[16] Basel Committee on Banking Supervision, Consultative Document: Strengthening the resilience of the banking sector. December 2009. [the "Consultative Document"].

[17] Consultative Document at paragraph 68.

[18] Senate Report 111-176 – discussion of *Section 616* amending HOLA to clarify the Board's authority to issue capital regulations for SLHCs where the Committee specifically notes:

> It is the intent of the Committee that in issuing regulations relating to capital requirements of bank holding companies and savings and loan holding companies under this section, the Federal Reserve should take into account the regulatory accounting practices and procedures applicable to, and **capital structure of, holding companies that are insurance companies (including mutuals and fraternals)**, or have subsidiaries that are insurance companies. " [emphasis added].

[19] Surplus notes typically are issued in SEC Rule 144A transactions and sold to qualified institutional buyers.

Given the long duration of the existing issues of surplus notes issued by insurance companies (typically 30 years), we believe that existing surplus notes, to the extent not deemed qualifying regulatory capital going forward, should be grandfathered as additional Tier 1 capital.

c. Provide specific examples and data to support any proposed alternative treatment.

We believe that the experience in the Lumbermens Mutual Insurance Company ("Lumbermens") situation demonstrates the value of surplus notes as a source of capital for an insurance company. Lumbermens issued surplus notes in three transactions dating from 1996 and 1997. The maturity date for these notes ranged from 2026 to 2097. Lumbermens surplus notes gave regulators a market perspective on the condition of this insurer, as the collapse in the market price of the surplus notes in 2002 was an early indication of problems at the company. As demonstrated by Lumbermens' year-end 2010 statutory statement, the Director of the Illinois Department of Insurance disapproved the payment of any interest or principal on the surplus notes beginning in November 2003 and, as of year-end 2010, the surplus notes had absorbed approximately $ 665 million in losses as the Director has overseen a run off of Lumbermens' business.

4. Are the proposed Basel III-based transition periods appropriate for SLHCs and, if not, what alternative transition periods would be appropriate and why?

The Collins Amendment has specified that SLHCs not yet subject to Board supervision shall not be subject to the capital standards required by the amendment until July 2015.[20] We believe that it would be inappropriate for the Board to impose similar capital standards under authority of HOLA prior to the date set by Section 171 of DFA. Likewise, we do not believe that the Basel III-based transition periods are the appropriate standard for the Board to use for SLHCs. The Collins Amendment sets a floor on SLHC capital based on the existing bank capital adequacy standards in effect on the passage of DFA and does not mandate that the new Basel III standards be applied to SLHCs. We urge the Board to avoid imposing the full Basel III capital adequacy framework on insurance company SLHCs without first fully exploring whether there are more appropriate options which are consistent with the Collins Amendment and Section 616(b)(2) of DFA.

5. What methods the Board should consider implementing for assessing capital adequacy for SLHCs during the period between the transfer date and implementation of consolidated capital standards for SLHCs.

We believe that the appropriate approach for measuring an insurance company's capital adequacy is to utilize the existing insurance company risk-based capital framework utilized by insurance supervisors. Indeed, we believe the application of bank capital standards to the business of insurance, as required by the Collins Amendment, is unnecessary and will likely lead to unintended and inappropriate results.

---

[20] DFA Section 171(b)(4)(D).

VI. Conclusion

The DFA envisions the Board will adopt a textured approach to the oversight of SLHCs. Indeed, the DFA rejects a "one-size-fits-all" regulatory approach. Moreover, using a uniform bank-centric model will prove less efficient and less effective in the oversight of SLHCs. Accordingly, the Board should modify its existing BHC supervisory approach to take into account both the differences in regulatory goals of HOLA and the BHCA as well as significant differences in activities of BHCs and SLHCs. The Board needs to focus on the material risks presented by a SLHC's business and activities. The business of insurance is fundamentally different than the business of banking especially in such areas as ownership structures, capital structures, the importance of actuarial modeling, risk and liquidity management, and use of insurance company separate accounts.

We encourage the Board to consider the insurance company specific issues outlined in this letter as it further develops its SLHC supervisory program. We would welcome the opportunity to meet with Board staff to further discuss our views and collaborate on the development of the Board's supervisory program for insurance-centric SLHC's.

Very truly yours,

Brandon Becker
Executive Vice President and Chief Legal Officer

cc: Ben Bernanke, Chairman of the Board of Governors
Daniel K. Tarullo, Member of the Board of Governors
Michael McRaith, Director of the Federal Insurance Office

Appendix A to May 23, 2011 Letter

Senate Report 111-176 – discussion of *Section 604.*

> This section removes limitations on the ability of the appropriate Federal banking agency (AFBA) for a bank or savings and loan holding company to obtain reports from, examine, and regulate all subsidiaries of the holding company. The Committee agrees with testimony provided by Governor Daniel K. Tarullo, on behalf of the Board of Governors of the Federal Reserve System (Federal Reserve) 'that to be fully effective, consolidated supervisors need the information and ability to identify and address risk throughout an organization.' For this reason, this section removes the so-called Fed-lite provisions of the Gramm-Leach-Bliley Act that placed limitations on the ability of the Federal Reserve to examine, obtain reports from, or take actions to identify or address risks with respect to subsidiaries of a bank holding company that are supervised by other agencies. However, this section also requires the AFBA for the holding company to coordinate with other Federal and state regulators of subsidiaries of the holding company, to the fullest extent possible, to avoid duplication of examination activities, reporting requirements, and requests for information. While the Committee supports consolidated regulation, it also **supports coordinated regulation**. Accordingly, section 604(b) requires the AFBA for a bank holding company to give prior notice to, and to consult with, the primary regulator of a subsidiary before commencing an examination of that subsidiary. The section contains an identical requirement with respect to the examination by the AFBA for a savings and loan holding company of a subsidiary of a savings and loan holding company. **Other provisions in section 604 specifically require the holding company regulator to rely `to the fullest extent possible' on reports and supervisory information that are available from sources other than the subsidiary itself, including information that is `otherwise available' from other Federal or State regulators of the subsidiary.** These provisions effectively require that the holding company regulator provide notice to and consult with the primary regulator, *e.g.*, the appropriate Federal banking agency for a depository institution, to identify the information it wants and ascertain whether that information already is available from the primary regulator. In addition, section 604 specifically requires the AFBA for the holding company to coordinate with other Federal and state regulators of subsidiaries of the holding company, '**to the fullest extent possible, to avoid duplication of examination activities, reporting requirements, and requests for information**.'" [Emphasis added].

Exhibit 1 – the April 11 Letter

TIAA CREF
FINANCIAL SERVICES FOR THE GREATER GOOD®

Teachers Insurance and Annuity Association of America
College Retirement Equities Fund
730 Third Avenue
New York, NY 10017-3206
212 490-9000 800 842-2733

Brandon Becker
EVP, Chief Legal Officer
Advocacy & Oversight
212.916.4750
212.916.6231 fax
brandonbecker@tiaa-cref.org

April 11, 2011

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

Re: FR Y-6, FR Y-9C, FR Y-9LP, FR Y-10, FR Y-11, FR 2314 and FR Y-12

Dear Ms. Johnson:

TIAA-CREF writes to comment on the Notice issued by the Board of Governors of the Federal Reserve System (the "Board"), dated February 8, 2011, regarding the financial reporting requirements the Board intends to impose on savings and loan holding companies ("SLHCs").[1] We appreciate the opportunity to participate in the discussion of how the Board intends to implement the new supervisory authority over SLHCs that it received under Section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA").

I. Background

TIAA-CREF is a leading provider of retirement services in the academic, research, medical and cultural fields managing retirement assets on behalf of 3.7 million participants at more than 15,000 institutions nationwide. TIAA-CREF is an organization comprised of several distinct corporate entities whose overall assets under management or administration total $453 billion.[2] Teachers Insurance and Annuity Association of America ("TIAA") is a life insurance company domiciled in the State of New York which operates on a not-for-profit basis with general account assets of $204 billion. TIAA is a wholly-owned subsidiary of the TIAA Board of Overseers, a special purpose New York not-for-profit corporation. Based on their indirect ownership of TIAA-CREF Trust Company, FSB, TIAA and the TIAA Board of Overseers are registered as SLHCs and are currently supervised by the Office of Thrift Supervision ("OTS"). The College Retirement Equity Fund ("CREF") issues variable annuities and is an investment company registered with the Securities and Exchange Commission ("SEC") under the Investment Company Act of 1940. TIAA-CREF also sponsors a family of equity and fixed-income mutual funds. TIAA-CREF's mission is "to aid and strengthen" the institutions we serve and provide financial products that best meet their special needs. Our retirement plans offer a

[1] 76 FR 7091 (Feb. 8, 2011).

[2] All financial information as of December 31, 2010.

range of options to help individuals and institutions meet their retirement plan administration and savings goals as well as income and wealth protection needs.

II. Insurance Activities

The proposed approach outlined by the Board in the Notice and the Joint Implementation Plan[3] to impose Bank Holding Company Act ("BHCA") based supervision and financial reporting requirements on SLHCs raises significant issues and concerns for TIAA-CREF. Since 1956, the activities of bank holding companies ("BHCs") have been severely restricted and the Board's approach to supervision and financial reporting for BHCs reflects this "bank-centric" history. Two significant assumptions underlie the approach advanced in the Notice: (i) that the majority of assets and liabilities of SLHCs are similar to those held by banks and BHCs and (ii) that Generally Accepted Accounting Principles ("GAAP") are used by SLHCs to prepare their financial statements. Neither of these assumptions is accurate in the case of TIAA and other SLHCs that are non-public insurance companies or that own insurance companies.

A. Accounting

The Board long has recognized that not all entities it supervises will utilize GAAP in preparing their financial statements.[4] Likewise, the OTS long has recognized that SLHCs that are insurance companies only may prepare financial statements using statutory accounting principles ("SAP") imposed by state insurance regulators[5] and has recognized that imposing a requirement on these SLHCs to also prepare GAAP financial statements solely based on their status as SLHCs would impose an unnecessary regulatory burden.[6] Similarly, the legislative

---

[3] Joint Implementation Plan (301-326 of the DFA) released by the Board, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency and OTS, January 2011.

[4] For example, the FR Y-7 instructions, specifically state that financial statements "should be prepared in accordance with local accounting practices." Indeed, in its recent proposed amendment to Regulation Y, the Board proposed a definition of "applicable accounting standards" that included, in addition to GAAP, international financial accounting standards and "such other accounting standards applicable to the company that the Board determines are appropriate . . . . " 76 FR 7731 at 7738 [proposed 12 CFR 225.300(a)].

[5] See Thrift Financial Report Instruction Manual – Schedule HC p. 1401 ("If your holding company is an insurance company, and does not prepare financial statements for external use in conformity with GAAP, you may file data from financial statements prepared in conformity with statutory accounting principles in the "Parent Only" column."); H-(b)11 Package Annual/Current Reports General Instructions Current Reporting Instructions OTS Form H-(b) 11 Item 5. Financial Statements ("Holding companies that are insurance companies may file financial statements prepared in conformity with statutory accounting principles only if they do not prepare GAAP financial statements for any other purpose").

[6] In addition, we would note that other federal regulators long have accepted financial statements prepared consistent with SAP for a variety of regulatory purposes. See SEC Rules 17h-1T and 17h-2T implementing Section 17-h of the Securities Exchange Act of 1934 (allowing insurance companies who are material associated persons of broker-dealers to furnish SAP financial information) and 17 CFR 210.7-02(b). Similarly, the SEC has permitted TIAA to provide SAP financial statements in connection with Form S-1 registration statements. See Letter from Richard F. Sennett, SEC Chief Accountant, to Mary E. Thornton, Partner at Sutherland, dated Feb. 28, 2008.

history of DFA establishes that Congress took particular care to leave in place the existing system of state insurance company regulation[7] and accounting.[8] This context is especially important in light of the amendment to Section 10(b)(2) of the Home Owners Loan Act (HOLA) contained in DFA Section 604(g) which requires the Board "to the fullest extent possible, use reports and other supervisory information that the savings and loan holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies."[9] [emphasis added] We believe imposing a GAAP accounting requirement on non-public insurance companies is inconsistent with Congressional intent in making this amendment to HOLA. As we discuss below, we believe the Board can, and should, use existing state insurance regulatory filings and the information they contain to meet its supervisory responsibilities for SLHCs that are non-public insurance companies.

1. Benefits of SAP

SAP is a well-established, conservative approach for presenting the financial statements of an insurance company. Insurance regulators developed SAP as a way to measure and protect the long-term solvency of insurance companies. Unlike GAAP, with a more prominent focus on quarterly earnings from the point of view of an equity investor, SAP provides a conservative view of an insurance company's financial position from the perspective of policyholders and insurance regulators focused on an insurance company's ability to meet its long-term obligations. As the Board becomes the federal supervisor of non-public insurance companies, we believe it should recognize that the balance sheet risks to such organizations are far different from those faced by publicly traded banking organizations which are significantly more dependent on relatively short-term funding sources such as deposits.

2. Differences between GAAP and SAP

We believe the key differences between GAAP and SAP can be broken down into the following areas: (a) calculation of policyholder and contract reserves; (b) consolidation; (c) deferred acquisition costs; (d) deferred income taxes; and (e) investment accounting and valuation. Each of these key differences is summarized below.

Policy and Contract Reserves. Minimum policy and contract reserves calculated under SAP use prescribed assumptions.[10] Under GAAP, such reserves are calculated based upon estimates of expected mortality, morbidity, persistency and interest using an entity's own experience rather than prescribed requirements.

---

[7] See DFA Section 203(e) (preserving existing system of rehabilitation or liquidation of insurance companies); DFA Section 619 (generally preserving authority of insurance companies to make general account investments); DFA Section 313(k) (retention of existing state regulatory authority).

[8] See Appendix A - Senate Report 111-76 – discussion of Section 616.

[9] See Id. – discussion of Section 604.

[10] For example, for a deferred annuity contract without cash settlement options and with a guarantee duration of five years or less issued in 2010 and valued on the "Issue Year" basis, section 4217 of the New York Insurance Law prescribes an interest rate of 5.25% and the Annuity 2000 Mortality Table be used in the computation of the minimum policy reserve.

Consolidation. Under SAP, subsidiaries are not consolidated, but are recorded as a single line presentation at underlying GAAP equity of the subsidiary. Similar treatment applies for investments in joint ventures, partnerships or pooled investments. Under GAAP, subsidiaries would be consolidated fully with gross financial statement presentation (all underlying assets and liabilities displayed) and other entities would be evaluated for consolidation under a variable interest or voting rights model.

Deferred Acquisition Costs. Costs incurred to issue new contracts (typically underwriting and medical exam expenses, sales commissions and incentives) are expensed immediately under SAP. Under GAAP, certain of these expenses are deferred and amortized over the life of the underlying contract. Thus, SAP will yield a more conservative result versus GAAP in the near term as all relevant expenses are reflected in current surplus.

Deferred Income Taxes. Under SAP, deferred tax assets are recognized when the benefits are more-likely-than-not to be utilized and are expected to be realized within the subsequent 3 years, and the aggregate amount is limited to 15% of current surplus.[11] Under GAAP, deferred taxes are not subject to an equity cap. Instead, a valuation allowance is recognized to offset deferred tax assets if it is more-likely-than-not (greater than 50% probability) that some portion of the deferred tax asset will not be realized in a future period. Thus, GAAP may result in an increase in surplus due to lifting of the 15% cap and 3 year realization criteria imposed under SAP.

Investment Valuation. Under SAP, an insurer's bond portfolio is generally carried at amortized cost less impairments for credit losses. Under GAAP, financial instruments considered to be available for sale or trading are carried at fair value. Measuring a higher percentage of the portfolio at fair value may result in increased volatility in an insurance company's surplus without a corresponding supervisory benefit, since the underlying financial condition of the insurance company is not materially changing.

Overall, we believe the conservative view of an insurance company's financial position that SAP offers would provide the Board with an appropriate set of data by which to evaluate SLHCs that primarily are engaged in the business of insurance.

3. FASB and IASB Joint Initiatives on International Accounting Convergence

A significant goal of U.S. and foreign financial supervisors is achieving international accounting convergence between U.S. accounting standards and international accounting standards.[12] As the Board is aware, the Financial Accounting Standard Board ("FASB") is

---

[11] This treatment is consistent with the Board's treatment of deferred tax assets under its risk-based capital rules for BHCs. See 12 CFR Part 225 Appendix A section II. B. 4.

[12] See "Commission Statement in Support of Convergence and Global Accounting Standards," 75 FR 9494 (Mar. 2, 2010 (The SEC "is publishing this statement to provide an update regarding its consideration of global accounting standards, including its **continued support for the convergence** of U.S. Generally Accepted Accounting Principles ("U.S. GAAP") and International Financial Reporting Standards") [emphasis added].

actively engaged with the International Accounting Standards Board ("IASB") working to achieve such international accounting convergence.[13] In connection with this initiative, FASB and IASB currently are reviewing proposals to change the accounting treatment of financial instruments[14] and insurance contracts,[15] as well as the standards regarding consolidation. These initiatives are likely to change fundamentally the nature of insurance company financial reporting under GAAP in the near term. Based on the current status of these initiatives, any imposition of a GAAP reporting requirement by the Board would require non-public insurance companies to put in place a system of financial reporting that is likely to need substantial revision and require new accounting policy decisions and frameworks in a relatively short period of time. Consequently, we urge the Board to delay any action that would impose GAAP reporting requirements on insurance companies that do not currently prepare GAAP financial statements, at least until there is clarity from the standard setters on international accounting convergence.

B. Bank-Centric Reporting

As the Board substantially increases its responsibility for supervising organizations primarily engaged in the business of insurance, it is imperative the Board takes steps to ensure the financial reporting requirements and metrics it imposes on these organizations are relevant to measuring the risks inherent in their business and, in particular, insurance company solvency. As the Board noted in its proposed amendment to its risk-based capital standards, "[o]thers, may be different, with exposure types and risks that were not contemplated when the general risk-based capital rules were developed."[16] Indeed, the Board specifically recognized that "there are some material exposures of insurance companies that, while not riskless, would be assigned to a 100 percent risk weight category because they are not explicitly assigned to a lower risk weight category. An automatic assignment to the 100 percent risk weight category without consideration of an exposure's economic substance could overstate the risk of the exposure and produce uneconomic capital requirements for a covered institution."[17] We believe that bank-centric ratios and tools for analysis provide a view of an insurance company's assets and liabilities which may not be representative of its true financial condition and solvency.

As was noted by the American Council of Life Insurers (ACLI) in its comment letter on the Board's proposed change to its capital adequacy standards, insurance company separate

---

[13] For general status of this initiative see: http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1218220137074

[14] For information on the status of the initiative regarding financial instruments see the FASB website at: http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB%2FFASBContent_C%2FProjectUpdatePage&cid=1175801889654

[15] For information on the status of the initiative regarding insurance contracts please see the FASB website at: http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB%2FFASBContent_C%2FProjectUpdatePage&cid=1175801889812

[16] 75 FR 82317 at 82319 (Dec. 30, 2010).

[17] 75 FR 82317 at 82320 (Dec. 30, 2010).

accounts have no equivalent on a bank's balance sheet.[18] Likewise, insurance reserves and bank deposits often have very different economic and risk characteristics. For example, TIAA has a high percentage of non-cashable reserves based on the structure of its retirement annuities. Such long-term stable liabilities differ markedly from funding sources available to banks and result in TIAA having a risk profile very different from a typical BHC. Similarly, non-public SLHCs, such as TIAA, and publicly traded BHCs face differing risks and challenges. For example, as was evident during the financial crisis, the stock price of a BHC has come to be viewed as indicative of its financial strength and its viability as a counterparty. Thus, the negative views of equity analysts and short sellers become self-fulfilling as indicators of financial weakness, as counterparties, including depositors, restrict exposure to BHCs they perceive the "market" (as demonstrated by a collapsing stock price) views as weakened. Non-public insurance companies do not face this threat to their businesses and consequently are less likely to face certain of the short-term liquidity challenges of bank-centric publicly traded BHCs.

III. Timing

TIAA-CREF believes the timing proposed in the Notice is unnecessarily short given the substantial issues that need to be addressed in the formal notice and comment rulemaking process. Given that the Board needs to wait until the transition date of July 21, 2011 to begin the rulemaking process[19] and assuming the Board provides interested parties at least the normal 60 days in which to comment on the formal proposed rule, the earliest the comment period could close would be the end of September 2011. Presumably, the Board would need time to review these comments and prepare a final rule, and thus a final rule would not be issued until the fourth quarter of 2011. Assuming this timeline and given the uncertainty of the rulemaking process, it would be unreasonable for the Board to presume that SLHCs would be ready to file the proposed reports for the quarter after the Board officially approves a new reporting regime for SLHCs that substantially differs from both the existing SLHC and state insurance company regulatory reporting regimes. Likewise, if the Board were to determine that non-public insurance companies needed to file financial statements consistent with GAAP, such organizations would need a reasonable period of time to create the new systems, processes and controls that would be required to prepare and file such statements.

Our organization maintains a planning and budgeting cycle that begins in the middle of the prior year for the next calendar year. Without adequate time to incorporate the detailed business requirements related to these regulatory reporting changes into our plans and budgets for 2012 (in addition to those already in effect for 2011), we would experience severe disruption of our business plans, increased costs and significant negative collateral impact on our ability to

---

[18] Letter from Julie A. Spiezio, Senior Vice President, Insurance Regulation & Deputy General Council, ACLI, to Chairman Bernanke, dated Feb. 14, 2011 (re: FRB Docket No. R-1402 and RIN No. 7100-AD62).

[19] We appreciate the Board's publishing the Notice to begin a dialogue with SLHCs regarding appropriate financial and organizational reporting, but under the Administrative Procedure Act the Notice is not an Advanced Notice of Proposed Rulemaking nor a Proposed Rule and does not justify a reduction in the time period for comments to be given on a formal rule proposal, particularly in this case where the Board inherits a pre-existing regulatory reporting regime that has already been subject to the formal rulemaking process.

continue to execute on existing strategic projects. Indeed, these costs will flow through as direct costs to our participants.

We believe the significant new costs TIAA and other insurers would bear, as both direct expenses and opportunity costs resulting from redirecting resources away from important business and technology initiatives, outweigh the benefits of the Board beginning to receive BHC-type reporting in early 2012. If the Board ultimately does require such reporting from SLHCs, we encourage the Board to work with affected companies to develop a phased approach to implementing these new reporting requirements.

IV. Responses to specific questions raised in the Notice

A. Whether the planned collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility;

While in general we support the Board's using its existing system of holding company regulation for the majority of SLHCs that through subsidiaries are primarily engaged in deposit-taking and lending activities, we believe that accommodations need to be made to this system to reflect appropriately the unique characteristics of insurance companies and in particular non-public insurance companies. As discussed above, the practical utility of requiring GAAP reporting for insurance companies that do not currently prepare GAAP financial statements is a question that needs to be considered carefully. In the case of insurance companies, the "one-size-fits-all" approach inherent in the FR Y-9 forms can lead to unintended outcomes, providing information that not only has little practical utility, but also reinforces the existing bank-centric supervisory focus that is not well suited for the supervision of insurance companies.

B. The burden of the planned information collection proposal;

To provide the various reports proposed in the Notice and to convert our systems and processes to begin to prepare GAAP financial statements, we would be required to: (i) identify how the various components of our existing system of financial reporting map to the requirements of the forms, (ii) identify gaps between the information currently collected and of that required under the forms proposed in the Notice under a different reporting framework, (iii) create an action plan to collect systematically information to close such gaps, (iv) obtain funding and professional resources to modify systems, procedures and controls to implement the action plan, and (v) implement the action plan in time to meet the Board's deadline for new reporting. This would require significant time and resources and ultimately provide little benefit to the firm, our clients, annuity participants or the Board.

In this light, TIAA-CREF believes the proposed implementation date is highly burdensome and, in particular, the process to map insurance company financial statements into the bank-centric FR Y-9 reports will impose a significant burden on insurance companies and their affiliates. Likewise, if the Board were to determine that GAAP financial reporting is required of insurance companies that are SLHCs or subsidiaries of SLHCs, the cost of creating systems, processes and controls to prepare such information in addition to state mandated SAP

financial reports, will be extremely high for each insurance company that does not currently prepare GAAP financial statements.

C. Ways to enhance the quality, utility, and clarity of the information to be collected:

We believe that a new schedule reflecting insurance company liabilities should be added to the FR Y-9 reflecting the fundamental difference between bank and insurance company liabilities. Likewise, we believe that separate account assets of an insurance company are fundamentally different than assets of banks and that the FR Y-9 should delineate such assets separately from the other assets of an insurance company.

D. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

As we stated above, TIAA-CREF strongly believes requiring GAAP reporting by insurance companies that are SLHCs or subsidiaries of SLHCs imposes an unnecessary regulatory burden on insurance companies that do not currently prepare financial statements according to GAAP. We believe the Board should consider carefully whether maintaining the OTS's existing policy of accepting insurers' statutory filings could be continued until the Board has greater information regarding the operations of non-public insurance companies.[20]

We encourage the Board to work with the insurance industry to identify information required on the FR Y-9 reports that is bank-centric and exempt insurance companies from providing detailed information not relevant to the risks in their business. Likewise, we recommend the Board work with the insurance industry to modify or supplement the FR Y-9 reports with information more relevant to insurance companies, especially regarding insurance reserves and separate accounts. In particular, we believe a collaborative mapping of state insurance filing information to FR Y-9 and other reports could be helpful. This would facilitate standardization of the treatment of separate accounts and policy and contract reserves. Finally, we recommend that the Board explore whether it could rely on state insurance holding company filings rather than imposing the FR Y-6 and FR Y-10 reporting requirements.

V. Conclusion

We encourage the Board to evaluate carefully the impact of its proposed general application of BHC reporting requirements to SLHCs on SLHCs primarily engaged in the business of insurance as well as on the Board's ability to supervise such organizations and to then make appropriate modifications to the reporting requirements to accommodate the business of insurance. Accommodations should include continuing to allow non-public insurance company SLHCs to provide SAP financial information. Such an approach follows existing OTS and Board precedent and is consistent with Congressional intent both to maintain deference to

---

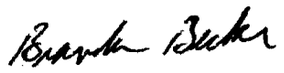
[20] We would note that the existing state insurance filings that TIAA provides to the New York State Department of Insurance contain extremely detailed information on individual portfolio holdings and transactions (*e.g.*, holdings by CUSIP along with impairments taken against each investment).

state regulation of insurance as well as to utilize existing reports provided to state regulators. SAP is well designed to demonstrate the actual financial condition and long-term solvency of an insurance company, while GAAP places greater emphasis on the presentation of shorter-term (and often temporary) financial developments.

Even if the Board were to determine it necessary for all SLHCs to prepare GAAP financial statements, we believe such a mandate should be postponed until after the current FASB/IASB joint initiative to achieve accounting convergence is completed, especially as applied to insurance contracts, financial instruments, and consolidation. Likewise, we believe a coordinated mapping of information from insurance company statutory statements to the FR Y-9 reports could be of great assistance in meeting the Board's goals of obtaining consistent information among similar entities and allow for effective off-site monitoring of insurance companies' financial condition.

We welcome the Board's offer in the Notice to provide outreach to SLHCs and would welcome the opportunity to meet with Board staff to discuss our views and collaborate on the development of reporting standards that will help the Board carry out its supervisory mandate for insurance-centric SLHCs.

Respectfully submitted,



Brandon Becker
Executive Vice President and Chief Legal Officer

cc: Ben Bernanke, Chairman of the Board of Governors
Daniel K. Tarullo, Member of the Board of Governors

Appendix A

Senate Report 111-176 – discussion of *Section 616* amending HOLA to clarify the Board's authority to issue capital regulations for SLHCs where the Committee specifically notes:

> It is the intent of the Committee that in issuing regulations relating to capital requirements of bank holding companies and savings and loan holding companies under this section, the Federal Reserve should take into account the **regulatory accounting practices** and procedures applicable to, and capital structure of, holding companies that are insurance companies (including mutuals and fraternals), or have subsidiaries that are insurance companies. " [emphasis added] and, in the context of requiring reports from owners of trust-only thrifts under this section, the Committee directly addressed the SAP/GAAP issue stating: "It is the intent of the Committee that such companies will be permitted to provide financial reporting to the AFBA utilizing the accounting method they currently employ in reporting their financial information. More specifically, **nothing in this provision is intended to mandate that insurance companies otherwise subject to alternative regulatory accounting practices and procedures use GAAP reporting.**" [emphasis added]

Senate Report 111-176 – discussion of *Section 604.*

> This section removes limitations on the ability of the appropriate Federal banking agency (AFBA) for a bank or savings and loan holding company to obtain reports from, examine, and regulate all subsidiaries of the holding company. The Committee agrees with testimony provided by Governor Daniel K. Tarullo, on behalf of the Board of Governors of the Federal Reserve System (Federal Reserve) 'that to be fully effective, consolidated supervisors need the information and ability to identify and address risk throughout an organization.' For this reason, this section removes the so-called Fed-lite provisions of the Gramm-Leach-Bliley Act that placed limitations on the ability of the Federal Reserve to examine, obtain reports from, or take actions to identify or address risks with respect to subsidiaries of a bank holding company that are supervised by other agencies. However, this section also requires the AFBA for the holding company to coordinate with other Federal and state regulators of subsidiaries of the holding company, to the fullest extent possible, to avoid duplication of examination activities, reporting requirements, and requests for information. While the Committee supports consolidated regulation, it also supports coordinated regulation. Accordingly, section 604(b) requires the AFBA for a bank holding company to give prior notice to, and to consult with, the primary regulator of a subsidiary before commencing an examination of that subsidiary. The section contains an identical requirement with respect to the examination by the AFBA for a savings and loan holding company of a subsidiary of a savings and loan holding company. **Other provisions in section 604 specifically require the holding company regulator to rely `to the fullest extent possible' on reports and supervisory information that are available from sources other than the subsidiary itself, including information that is `otherwise available' from other Federal or State regulators of the subsidiary.** These provisions effectively require that the holding company regulator provide notice to and consult with the primary regulator, *e.g.*, the

appropriate Federal banking agency for a depository institution, to identify the information it wants and ascertain whether that information already is available from the primary regulator. In addition, section 604 specifically requires the AFBA for the holding company to coordinate with other Federal and state regulators of subsidiaries of the holding company, '**to the fullest extent possible, to avoid duplication of examination activities, reporting requirements, and requests for information**.'" [emphasis added].