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

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[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.

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[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. <u>Bank-Centric Reporting</u>

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

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[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. <u>Timing</u>

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

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[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

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[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

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].