ACLI
Financial Security...for Life.

Julie A. Spiezio
Senior Vice President, Insurance Regulation & Deputy General Counsel
(202) 624-2194 t (866) 953-4083 f
juliespiezio@acli.com

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The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of $50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve (Doc. No. 1457; RIN 7100-AD-95)

Dear Chairman Bernanke:

These comments are submitted on behalf of the American Council of Life Insurers (ACLI). The ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the U.S. We appreciate the opportunity to submit comments on the Federal Reserve Board's (the "Board") notice of proposed rulemaking establishing supervision and regulation assessments for bank holding companies and savings and loan holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board ("Proposed Rule"). Our comments focus on issues relevant to life insurance entities that may be affected by the Proposed Rule because they are either part of a savings and loan holding company system or are a nonbank financial company designated for supervision by the Board by the Financial Stability Oversight Council.

As a general comment, we think the Board should reconsider basing the assessments discussed in the Proposed Rule solely on size. We believe that assessments should not be based solely on the amount of a company's total consolidated assets, as size alone is not an accurate reflection of the actual regulatory oversight resources a company will require. Instead, we think it is important to calculate an institution's overall complexity, including its capital structure, financial activities and other risk-related factors when assessing a company for provision of regulatory oversight purposes. Size is merely one factor to consider in determining the cost of regulatory oversight of a financial institution.

We recognize that such an approach would require more complex analytics. However we believe it is appropriate to include calculation of complexity and risk-related factors into the proposed assessments, as a more complex company will require more regulatory oversight resources regardless of its size, and therefore should bear a higher percentage of the expenses for those resources. Simply put, since size is not the sole determinant of regulatory oversight expense, size should not be the sole determinant for assessment amounts.

The inappropriateness of the use of size as the sole factor in the assessment process is particularly evident when considering savings and loan holding companies and nonbank financial companies that are predominantly insurance enterprises. The financial activities of such companies differ significantly from those conducted by banks and bank holding companies, and the insurance activities are already regulated by the states with the companies and their policyholders bearing the cost. The Board proposes to include in its estimated expenses the aggregate expenses for activities related to the supervision and regulation of the "entire population of assessed companies."[1] Yet much of the expense that the Board incurs with respect to bank holding companies will not be relevant to the financial activities engaged in by savings and loan holding companies or nonbank financial companies that are predominantly insurance enterprises. Thus, it is not reasonable or appropriate to attribute to these entities, based on their size, a proportionate share of the aggregate expenses incurred by the Board for the "entire population" of assessed companies when in fact a disproportionate share of the expenses actually incurred are attributable to bank holding companies.

One example here may suffice. The preamble to the Proposed Rule mentions (without elaboration of any kind) the types of expenses that the Board proposes to include in its estimate of aggregate expenses for the entire population of assessed companies. Among the expenses listed are those related to enforcement actions. The Board has been actively engaged in a number of high profile (and presumably high cost) investigations and enforcement actions with respect to the banking industry, covering such matters as mortgage servicing, foreclosures and anti-money laundering and U.S. sanctions laws. These very significant investigations and enforcement actions focused heavily, if not exclusively, on the banking sector. It is not appropriate to assess savings and loan holding companies or nonbank financial companies for such matters simply because they fall within "entire population" of assessed companies.

We offer additional specific comments below.

Separate Accounts Should Not Be Included in the Calculation of Total Consolidated Assets or Total Assessable Assets for Assessment Purposes

As you are aware, many life insurers hold large amounts of assets in separate accounts. These separate accounts do not contribute to a company's overall size in the same way that general account assets do. Separate accounts are used by life insurers for variable insurance products, and the assets in separate accounts function like assets under management at an asset manager. Although these assets appear on the balance sheet, the policyholder directs the investment of the funds and can withdraw the fair value of the assets. For the reasons discussed herein, we believe separate accounts should be excluded from the calculation of total consolidated assets and total assessable assets for purposes of the Proposed Rule.

A separate account is a traditional device established on the books of an insurance company pursuant to state insurance law. A separate account is an accounting mechanism whereby money received as a premium or purchase payment by the insurance company from customers under an insurance contract is credited to the account and invested in securities that are earmarked for these particular customers pursuant to contract terms. The investment approach for the account is chosen by the contract owner based on the options offered by the insurer. Any income, gains or losses attributable to the securities are then credited to that separate account for the benefit of individual customers with contract liabilities. While the assets attributable to the separate account are generally held to satisfy the claims of the relevant customers and not the general creditors of the insurance company, the customers do not legally own such assets. The insurance company's payment obligations to a customer with a variable contract are determined based on the investment performance of the assets held in the dedicated separate account, and the customer can withdraw the fair value of the assets in the separate account.

Inclusion of separate account assets in the calculation of total consolidated assets or total_assessable assets for assessment purposes would inappropriately inflate any effected life insurer's assessment. Therefore we respectfully request that the Proposed Rule be amended to clarify that life insurer separate accounts will not be included in the calculation of total consolidated assets or total assessable assets for purposes of the proposed rule.

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1 78 Fed. Reg. 23162, 23164 (April 18, 2013).

The Board Should Accept Statutory Accounting Statements from Life Insurers That Do Not Prepare GAAP Statements

The description of the Proposed Rule provided with the proposal notes that, for purposes of determining the assessment of a company: "If a U.S.-domiciled company does not report total consolidated assets in its public reports or uses a financial reporting methodology other than U.S. GAAP, the Board may use, at its discretion, any comparable financial information that the Board may require from the company for this determination."[2] We believe that for this and any other relevant purpose under the Proposed Rule the Board must accept statutory accounting (SAP) statements from those life insurers that do not currently prepare GAAP financial statements.

As we have noted to the Board before, a number of life insurance companies prepare financial statements only in accordance with SAP as required by state insurance laws and regulations and do not prepare GAAP financial statements.[3] State insurance laws and regulations require that the quarterly and annual unaudited financial statements and the annual audited financial statements filed by U.S. insurers be prepared using forms and applying accounting principles adopted from time to time by the National Association of Insurance Commissioners ("NAIC"). The NAIC has adopted forms of quarterly and annual statutory financial statements and comprehensive accounting rules set out in its Accounting Practices and Procedures Manual.

Since U.S. life insurance companies are required by state insurance law and regulations to prepare their financial statements in accordance with SAP, and since some of those companies do not prepare GAAP financials in addition to their SAP statements, the Board should accept the SAP statements in lieu of GAAP statements or other financial documents for purposes of the Proposed Rule. To do otherwise would result in the expending of significant financial and other resources by those companies unnecessarily, with no obvious benefit to the Board or the effective implementation of the Proposed Rule.

Nonfinancial Assets Should Not Be Included in the Calculation of Total Consolidated Assets or Total Assessable Assets

As noted in the preamble to the Proposed Rule, the "total assessable assets" of companies subject to assessment would include "total assets for all activities subject to the Board's supervisory authority as the consolidated supervisor."[4] This limitation is based on the language of section 318 of the Dodd-Frank Act, which provides that the assessment is to cover expenses that are necessary or appropriate "to carry out the supervisory and regulatory responsibilities of the Board with respect to [the companies subject to assessment]." Under the relevant provisions of the Home Owners' Loan Act, the Board does not have supervisory or regulatory responsibilities with respect to the nonfinancial activities or subsidiaries of a grandfathered savings and loan holding company[5]. The Board has appropriately implemented this limitation by providing in proposed section 264.4(e)(4) that the total assessable assets of a grandfathered unitary savings and loan holding company "will only include the assets associated with its savings association subsidiary and its other financial activities." We agree with this approach. But we further submit that in determining whether a grandfathered unitary savings and loan holding company should be an "assessed company," it would also be appropriate to exclude nonfinancial assets from the total consolidated assets test in proposed section 246.3(a)(ii).

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[2] 78 Fed. Reg. at 23163, footnote 5.

[3] *See, e.g.*, Letter from the ACLI, to the Board (April 8, 2011) *available at* http://www.federalreserve.gov/SECRS/2011/april/20110408/ICP-201102_69298_582632855945_1.pdf *and* Letter from the ACLI, to the Agencies (April 19, 2013) *available at* http://www.fdic.gov/regulations/laws/federal/2013/2013-reorts-condition-income-c_13.pdf

[4] 78 Fed. Reg. at 23163.

[5] *See* 12 U.S.C. § 1467a(c)(3) and (9). *See also* 12 U.S.C. § 1467b(b)(i)(B)(ii).

We also note that the Proposed Rule does not include a similar exclusion for assets associated with the nonfinancial activities of a nonbank financial company designated under section 113 of the Dodd-Frank Act. Comparable to the situation for grandfathered unitary savings and loan holding companies, the Board's supervisory and regulatory responsibilities for nonbank financial companies do not extend to the nonfinancial activities and subsidiaries of such companies.[6] Consistent with the observation in the preamble that total assessable assets would include total assets "for all activities subject to the Board's supervisory authority", the assets attributable to the nonfinancial activities of a nonbank financial company should be excluded from total assessable assets. This would result in comparable treatment for grandfathered unitary savings and loan holding companies and for nonbank financial companies.

The First Assessment Period Should Begin for 2013 or 2014.

In the Proposed Rule, the Board has proposed to collect assessments beginning for 2012 as the first assessment period.[7] We submit that the first assessment period should be either 2013 or 2014. Because the assessment will be a substantial cost to individual companies, we believe that it should be applied prospectively rather than retroactively. Hence, we suggest that the first assessment period be 2013 or 2014.[8]

Thank you for your consideration of our views. We are available for further discussion on this matter at your convenience.

Respectfully submitted,

Julie A. Spiezio

Julie A. Spiezio

CC: Robert deV. Frierson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW.
Washington, DC 20551

[6] *See* 12 U.S.C. § 5367(b)(i)(B)(ii).
[7] The ACLI agrees with the Board's proposed use of December 31 as the "as of" date for determining assessed companies.
[8] In general, we believe a company identified for assessment on the December 31 "as of" date should only be assessed on a pro rata basis for that time within the year that the company actually falls under the Board's supervisory authority, and we recommend that the Proposed Rule be amended accordingly.