United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

October 15, 2012

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

The Honorable Thomas J. Curry
Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

The Honorable Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairman Bernanke, Comptroller Curry and Acting Chairman Gruenberg:

I am writing to request additional information regarding the notices of proposed rulemaking ("NPRs") implementing the Basel III capital accords that the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency (collectively, the "Agencies") issued on June 12, 2012.

I have long considered strong capital requirements essential for a safe and sound banking system and as valuable protection against taxpayer-funded bailouts. I have also long supported transparency and cost-benefit analysis in the Federal rulemaking process to ensure that Federal agencies and the public are fully informed about the impacts of the new rules. It is from this perspective that the NPRs raise two major concerns.

First, the NPRs are based in large part on the Basel III capital accords devised by the Basel Committee on Banking Supervision ("BCBS"), but the NPRs fail to explain whether such standards are appropriate for the U.S. banking system. While it is possible that the Basel III capital accords are appropriate for the U.S. banking system, the NPRs do not adequately explain how the Agencies determined that Basel III is calibrated correctly for U.S. institutions. Although I agree with the Agencies' assertion that "[t]he recent financial crisis demonstrated that the amount of high-quality capital held by banks globally was insufficient to absorb losses during that period" (77 FR 52800), the NPRs do not explain why Basel III, as proposed in the NPRs, will ensure that our banking system is sufficiently capitalized.

Second, the NPRs fail to explain with requisite specificity the rules' impact on the U.S. banking system and the overall economy. Given the rules' anticipated significant impact on economic growth, job creation, and credit availability, the Agencies should provide Congress and the public with a cost-benefit analysis estimating how existing capitalization levels will change, the costs of complying with the rules, and the aggregate impact of the rules on the economy.

Although the Agencies appear to have already conducted much of this analysis, they have so far chosen not to provide it to Congress or the public. In the NPRs, the Agencies state that they have "conducted an impact analysis using depository institution and bank holding company regulatory reporting data" and "made stylized assumptions in cases where necessary input data were unavailable from regulatory reports" (77 FR 52798). However, such assumptions and underlying analysis were not disclosed in the NPRs, or otherwise, even though they represent the very foundation of the proposed rules. Additionally, the Agencies contributed data from a domestic quantitative impact study ("QIS") to the BCBS in December 2010 without publicly releasing specific U.S. findings. As a result, the Agencies have now proposed new rules based in large part on a global QIS, utilizing non-public data and relying on non-public assumptions.

This is not the first time that I have urged the Agencies to be transparent in this rulemaking process. Following Chairman Bernanke's testimony before the Senate Committee on Banking, Housing and Urban Affairs on September 30, 2010, I urged the Board of Governors to provide more transparency and asked specifically whether the Board would conduct a QIS that shows how much capital will increase in our financial system as a result of Basel III and how it would impact economic growth in the future. I also asked if the results of any QIS performed by the Board would be made available to Banking Committee members. Chairman Bernanke informed me at that time that the Board had begun conducting a QIS and would contribute domestic QIS data on a confidential basis to the global QIS, which it did in December 2010. Nevertheless, the Agencies have yet to provide this data to the Banking Committee or to the public.

Such a cloistered approach to rulemaking is inconsistent with our democratic form of government. By omitting key data from this important rulemaking, the Agencies are not only preventing the public from understanding how these rules will impact them and the economy, but also undermining the ability of Congress to hold the Agencies accountable for the rules they promulgate. In light of the failure of the Agencies to ensure that our banking institutions were adequately capitalized prior to the financial crisis, it is imperative that Congress and the public have the information needed to independently assess the NPRs prior to their adoption.

Accordingly, I respectfully request that you provide (1) the analysis underlying the Agencies' determination that implementation of the NPRs would leave our banking system adequately capitalized; (2) a quantitative analysis of how these rules would affect the capitalization levels of U.S. banks by size and by asset class; and (3) a cost-benefit analysis of the impact these rules would have on the operation of the U.S. banking system and the overall economy. This information will help Congress and the public better evaluate the NPRs and understand their impact.

Please enter this letter into the Agencies' public comment dockets. Thank you for your assistance and I look forward to your prompt response.

Sincerely,

Richard C. Shelby