First American Financial Corporation

January 21, 2020

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System,
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Docket No. R–1673; RIN 7100–AF 56
Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities

Dear Ms. Misback:

I. Introduction

This comment letter is submitted by First American Financial Corporation (First American), a savings and loan holding company that is primarily engaged in the business of providing title insurance, closing and escrow services, and related services to customers throughout the United States and internationally. In addition to title insurance, First American offers specialty insurance products, including property and casualty insurance policies and home warranty products. First American's subsidiary savings and loan, First American Trust, F.S.B., offers trust, wealth management and deposit products and related services, including fund transfer services.

First American appreciates the efforts of the Federal Reserve Board (Board) in developing a risk-based capital framework for savings and loan holding companies with significant insurance underwriting activities. The notice of proposed rulemaking (NPR) evidences considerable thought and rigor and provides an excellent basis for the development of a final regulation. We are making the following suggestions with respect to the treatment of title insurance in order to further the process of achieving a final regulation that accurately quantifies the level of risk inherent in a title insurance business.

II. Treatment of Title Insurance Under the NPR

The NPR provides that a savings and loan holding company that is primarily engaged in title insurance, such as First American, will use a modified version of the Board's banking capital rule.[1] The NPR notes that for such a company the risks of title insurance are "reflected in part in

[1] 84 Fed. Reg. at 57250.

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the company's claim reserve liability."[2] Based on a review of historical title claim reserves, the Board determined that the observed risk for title insurance is comparable to assets that are assigned a risk weight of 300 percent. The NPR would therefore assign a risk weight of 300 percent to claim reserves relating to title insurance.

The NPR also notes that a significant asset of a typical title insurance company is the "title plant," which, under Generally Accepted Accounting Practices (GAAP), would be considered an intangible asset.[3] The NPR would deduct this asset from capital.[4]

III. Claim Reserves

A. Claim Reserves are Analogous to a Bank's Allowance for Loan and Lease Losses (ALLL) or Adjusted Allowance for Credit Losses (AACL)

A "claim reserve liability" is an account created by an insurance company to reflect reserves for known claims and reserves for claims that have been incurred but not yet reported. A known claim reserve refers to a reserve for a claim that has been filed, but the amount of the final resolution payment has not yet been determined or the payment has not yet been made. A claim that is incurred but not yet reported refers to claims that are expected or estimated to occur but have not been filed with the insurer.

In the title insurance context a loss reserve is established in connection with the recognition of the premium from the issuance of title insurance policies. The loss reserve equates to a certain percentage (i.e., the loss provision rate) of the premium that is recognized. The intent is to estimate the claims-related losses that are expected to materialize over the life of those policies. The expected loss associated with those claims is therefore incurred and reserved for at the time of the recognition of the associated premium, although the claims have not yet been reported.

The amount of estimated ultimate title claims is calculated by applying the loss provision rate to associated title insurance premiums, which is then reduced by losses already paid to derive the claim reserve liability amount. The loss provision rate is determined by reviewing the development of historical losses for the various business segments and considering other relevant factors. The loss provision rate is established at the beginning of each fiscal year and readjusted quarterly to update the estimate of the title claim reserve liability that will be sufficient to cover all expected claims.

Title insurance policies have a long-tail relative to most other types of insurance. A title policy has no defined term and is not renewed annually or semi-annually as with other insurance lines of business. A policy issued to a lender typically stays in effect for the duration of the related mortgage loan. A policy issued to the owner of the property typically stays in effect for the duration of that ownership. However, most claims are filed within the first several years following the issuance of the policy.

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[2] Id. at 57256.
[3] Id. at 57357 footnote 67.
[4] 12 C.F.R. § 217.22(a)(2).

A title claim reserve liability is closely analogous to an allowance for loan and lease losses (ALLL) that banking institutions are required to establish to cover individually evaluated loans that are determined to be impaired as well as estimated credit losses inherent in the remainder of the loan and lease portfolio.[5] Starting in 2020, and phased-in over the following two years, banking institutions will begin using the "current expected credit losses methodology" (CECL) for estimating a "valuation allowance" for credit losses equal to lifetime expected losses on financial assets.[6] As the new methodology is phased-in the ALLL will be replaced by the "Adjusted Allowance for Credit Losses" (AACL), for banking institutions using CECL. The AACL represents the valuation allowances that have been established through a charge against earnings or retained earnings for expected credit losses on financial assets measured at amortized cost.[7] We will refer to both the ALLL and AACL as a bank's "loss reserve" for purposes of this letter.

B. <u>Title Claim Loss Reserve Liabilities Should be Treated like Bank Loss Reserves</u>

A title claim loss reserve liability, similar to a bank's loss reserve, provides a buffer for the institution that enhances its safety and soundness because future losses will be absorbed by the reserve that has been built up over time rather than through the payout of capital at the time of loss. As an accounting matter, the establishment of both a title claim reserve liability and a bank's loss reserve reduces the capital of a company. Both types of loss reserves are considered either a "contra-asset" or "liability." Yet, the NPR does not treat title claim loss reserves the same as bank loss reserves.

The Board and the other banking agencies recognize that bank loss reserves act as a financial buffer, and that such reserves lower reported capital. Thus, the bank loss reserve is included as a component of a bank's Tier 2 capital up to 1.25 percent of total risk-weighted assets in the Basel III Standardized Approach.[8] Furthermore, for capital purposes, a bank is not required to hold capital against the remainder of the loss reserve that is not a component of Tier 2.[9] To summarize, for banks a robust loss reserve is <u>encouraged</u> by: (1) allowing a portion of the reserve to be included in Tier 2 capital; and (2) not imposing a capital charge on the remainder of the loss reserve.

The proposed treatment of title insurance is the direct opposite. Rather than recognizing and supporting the establishment of title claim reserves, the NPR would not include any portion of those reserves as Tier 2 capital and would impose a capital charge on those reserves by assigning to them a punitive 300% risk weight. As a result, the NPR disincentivizes the creation and maintenance of this type of loss reserve.

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[5] See, Interagency Policy Statement on Loan and Lease Losses, December 2006.
[6] This methodology will be phased-in over a 2-year period. See, the Joint Statement on New Accounting Standard on Financial Instruments – Credit Losses, (June 17, 2016). The new accounting standard does not specify a single method for measuring expected credit losses; rather, institutions will use judgment to develop estimation methods that are well documented, applied consistently over time, and faithfully estimate the collectability of financial assets by applying the principles in the new accounting standard.
[7] 84 Fed. Reg. 4222 (2019).
[8] Id.
[9] See, e.g. 12 CFR §3.2.

Capital treatment for title claim reserves that is more aligned with the treatment of a bank's loss reserves is appropriate because such reserves are critical to safety and soundness. In the fall of 1998, the Securities and Exchange Commission (SEC) raised concerns regarding the loan loss reserve practices of some banking organizations, requiring one banking organization to reduce its reserves by $100 million.[10] As a result, many banks began to take a less conservative approach to reserving. The banking agencies, including the Board, raised alarms about this trend, noting in speech after speech the importance of a robust loss reserve for bank safety. For example, in 1999 Federal Reserve Board Governor Meyer testified that "Conservative allowance levels contribute to safety and soundness by ensuring that insured depository institutions maintain strong balance sheets and capital levels that reflect the collectability of the loan portfolio. Accordingly, the Federal Reserve and the other banking agencies have long encouraged (emphasis added) institutions to maintain strong loan loss allowances."[11]

Similarly, in 2009, the Comptroller of the Currency stated that conservative loan loss accounting should be encouraged by allowing a higher percentage of the allowance to count as Tier 2 capital. As explained by then-Comptroller Dugan:[12]

> "Like capital generally, loan loss reserves serve the important basic safety and soundness function of absorbing losses. Indeed, loan loss reserves are a front line of defense for absorbing credit losses before capital must do so. The current Basel Committee rules recognize this fact to a limited extent by allowing loan loss reserves to count as Tier 2 capital, but only up to 1.25 percent of risk-weighted assets. That's too stingy. Given their primary, capital-like loss absorbing function, loan loss reserves should get greater recognition in regulatory capital rules, a result that would help remove disincentives (emphasis added) for banks to hold higher levels of reserves."

The failure to include any portion of title claim reserves as Tier 2 capital, and the imposition of a punitive 300 percent risk weight on title claim reserves would have the opposite effect to what has been deemed appropriate for banking organizations. It would discourage robust provisioning for claims, particularly in difficult economic times where capital levels are more likely to be closer to minimum required thresholds, thereby adversely impacting safety and soundness. It is incongruous that the Board would include a portion of a bank's loss reserves as a component of Tier 2 capital, and not impose a capital charge on the remainder of the bank's loss reserve, but not include any portion of title claim loss reserves in Tier 2 capital and impose a 300 percent risk weight on those reserves.

C. The NPR Does Not Adequately Explain the Basis for the Proposed Risk Weight

The NPR states only that: "To determine an appropriate risk weight to apply to this [title claim reserve] liability, the Board reviewed data from historical title claim reserves and observed

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[10] SEC Warns Banks Against Overgenerous Reserve Levels, N.Y. Times, Nov. 14, 1988 at page C2.
[11] Testimony of Lawrence Meyer Before the Subcommittee on Financial Institutions of the House Committee on Banking and Financial Services, (June 16, 1999).
[12] Remarks by John C. Dugan, Comptroller of the Currency, before the Institute of International Bankers March 2, 2009 "Loan Loss Provisioning and Pro-cyclicality."

a risk comparable to assets that have been assigned a 300 percent risk weight in the Board's banking capital rule."[13]

The NPR does not provide the basis for its conclusion that the level of a title insurer's claim reserves is an appropriate measure of the risks inherent in the title insurance business. The NPR also does not explain why it concludes that title claim reserves are comparable to assets assigned a 300 percent risk weight. These are assertions made without further explanation or support in the NPR, which makes them difficult to comment on, at least solely through the information that is contained in the NPR.

D. Title Claim Reserve Volatility does not Justify a 300 Percent Risk Weight

Under the Board's rules, a 300 percent risk weight generally is applied to a publicly traded equity exposure[14] and we understand that the Board analogized to publicly traded equities in determining the 300 percent risk weight for title reserves. As noted above, however, the rationale for applying a 300 percent risk weight has not been provided in the NPR.

While a 300 percent risk weight applies for many publicly traded equities, a publicly traded index fund, such as a fund based on the S&P 500 index, receives a 100 percent risk weight if it makes up less than ten percent of the bank's total capital. This means that under the NPR title claim loss reserves would receive a higher risk weight than the blended risk weight of First American's publicly traded equity portfolio.

We acknowledge that there is a degree of volatility associated with title claim reserves, particularly during difficult economic conditions, as evidenced by the need for reserve strengthening charges in the title insurance industry during the Great Recession. However, the volatility associated with title claim reserves is far less than that of publicly traded equity securities.

Exhibit A shows the volatility levels of title claim reserves from 2000 to 2018. Reserve volatility is defined as the annual change in estimated ultimate losses for the title insurance industry, as a whole, expressed as a percentage of the prior year's ending reserve balance. First American believes this calculation to be the best measure of volatility as it represents, after the emergence of an additional year of loss experience data, what the total required reserves would have been with the benefit of hindsight.

Exhibit A also shows the volatility of the S&P 500 and the Bloomberg Barclays U.S. Corporate High Yield Total Return Index during those same years. Focusing on the Great Recession time period, for example, the highest year of title reserve volatility was under 17%, which is much lower than the level of volatility experienced in the stock market and relatively consistent with (though still lower than) the volatility experienced in the high-yield corporate bond market.

In addition, for the reasons described below, we do not anticipate a similar level of volatility for title claim reserves in the event of another downturn, even if that downturn is of the magnitude of the Great Recession. But even the level of volatility that occurred during the Great Recession does not warrant a 300 percent risk weighting. As Exhibit A shows, the reserve

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[13] See Section VI(B)(5) of NPR.

[14] 12 CFR § 217.52(b)(5).

volatility during the Great Recession is more in-line with (though lower than) a high-yield corporate bond which receives a 100 percent risk weighting.[15]

E. Volatility associated with Title Claim Reserves has Decreased since the Great Recession

Since the Great Recession there have been significant changes in both mortgage underwriting standards and title insurance underwriting standards. Many of these changes were driven by regulations passed in the Great Recession's aftermath. Collectively, these changes have the effect of lowering the volatility associated with title claim reserves.

a. Changes in Mortgage Underwriting Standards Reduce the Volatility of Title Claim Reserves

In connection with residential real estate purchase and refinance transactions in the United States, title insurers issue policies to owners of property and to mortgage lenders. The lender's policy typically ensures the lender's priority in the event of a foreclosure. If a foreclosure occurs and the lender's priority was not as stated in the policy (such as when there was an unreleased prior mortgage or other lien that was missed in the title search), the lender may make a claim against the title insurance company under the policy.

Importantly, a loss by the lender is a prerequisite for the making of a claim under the lender's title policy. If, for example, the same prior lien was missed on the title search, but the lender's loan was fully paid then the lender would have no claim under the title policy. Accordingly, elevated foreclosure activity leads to elevated title claims under lenders' policies. By way of illustration, lenders' policy losses associated with domestic residential real estate transactions average between 25% and 30% of total policy losses under normal economic conditions but represented over 50% of total policy losses during 2008.[16] We believe that a significant component of this difference is attributable to additional risk taking in mortgage underwriting and loan origination processes in the years leading up to the Great Recession.

In contrast, the amount of losses experienced by lenders (and related title claims exposure) decreases when lenders take less risk in their mortgage underwriting and loan origination processes. Regulatory changes post-2010 and lender practices have resulted in far different standards than those that were used before the Great Recession.

Under the Dodd-Frank Act, a creditor may not make a mortgage loan without considering the ability of the borrower to repay. The Consumer Financial Protection Bureau, established by the Dodd-Frank Act, has issued regulations to provide a safe harbor for certain loans (Qualified Mortgages) that meet minimum underwriting requirements. Certain risky loan terms are not permissible for Qualified Mortgage loans, and others are restricted.

The Dodd-Frank Act also requires originators to retain a portion of the risk for mortgages sold into a securitization, unless the mortgage meets the requirements to be a "Qualified Residential Mortgage" or "QRM." The QRM test imposes another reason for tightening loan underwriting criteria.

[15] 12 CFR § 217.32

[16] Based on First American data.

Additionally, since the Great Recession, the federal banking agencies have sought to encourage more conservative mortgage practices. See, e.g. the Comptroller's Handbook on Residential Real Estate Lending, issued most recently on January 6, 2017,[17]and the "Interagency Statement on Supervisory Approach for Qualified and Non-Qualified Mortgage Loans."[18]

As a result of these changes in the mortgage industry, and in particular the tightening of underwriting standards, the losses suffered during the Great Recession are not indicative of the risks currently faced in the title insurance business.

b. Changes in Title Insurance Underwriting Standards and Practices Reduce the Volatility of Title Claim Loss Reserves

In addition to the spike in title claims under domestic residential lenders' policies during the Great Recession, mechanics' lien claims associated with commercial projects spiked significantly.[19] Like claims under residential lenders' policies, commercial mechanics' lien claims are elevated under difficult economic conditions because a larger portion of projects fail, leaving lenders with losses and contractors unpaid.

In response to the mechanics' lien coverage losses experienced during the Great Recession, the title insurance industry made policy coverage changes. Those changes, together with the other changes described below, have the effect of reducing the volatility of title claim loss reserves.

1) Coverage Changes

The title insurance industry, through the work of the American Land Title Association ("ALTA"), created a set of new endorsement coverages that provide mechanics' lien coverage in a more limited manner than in previous years. The coverage changes came in the form of a series of endorsements to lenders' policies, known as the ALTA 32/33 Endorsements. These endorsements provide varying degrees of incremental coverage against potential mechanics' liens. The coverage is incremental because it is tied to the construction loan advances that are made by the lender, typically on a monthly cycle. The endorsement coverage is typically limited to only work performed prior to the specific loan draw, usually after a review of the construction documents supporting the draw.

Prior to these changes, it was more common to provide the construction lender with "upfront coverage" against future liens from the project, rather than incremental coverage. It also was previously more common to rely on an indemnification from the developer to provide the lender with this broader coverage.

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[17] https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/residential-real-estate-lending/pub-ch-residential-real-estate.pdf

[18] https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20131213a1.pdf

[19] The typical scenario involves a failed commercial construction project where mechanics' liens (liens filed against the property by contractors that worked on the project) take priority over the construction lender's interests in the property in a way that is covered under the title insurance policy.

2) Statutory, Regulatory and Judicial Changes

Several states have adopted legislation or regulatory procedures that serve to mitigate mechanics' lien risk to title insurers. Generally speaking, these changes have effectively revised the process and/or remedies for unpaid contractors in ways that are favorable to title insurance companies. Other states have clarified their laws in this area.[20]

3) Lending Industry Changes

Since a lender's loss is required before that lender can make a mechanics' lien claim, banking and mortgage lending reform in the commercial real estate sector, particularly for construction loans, has had the effect of reducing mechanics' lien claims against title insurers. Since the Great Recession the commercial lending industry has improved internal controls and procedures around its loan underwriting practices. As a result, compared to conditions leading up to the Great Recession, many less viable projects do not receive financing, and therefore no title insurance policy is issued.

In addition to mechanics' lien coverage underwriting practices, the title industry has drastically reduced or eliminated the ability to receive creditors' rights coverage (so that coverage is not provided if a bankruptcy court invalidates a transaction in, for example, a fraudulent conveyance circumstance). This coverage was the source of substantial claims during and shortly following the Great Recession. First American also has eliminated or altered problematic products offered before the Great Recession and enhanced its procedures and controls around the formation of new products and ventures. All of these actions would tend to reduce the volatility associated with title claim loss reserves. The company is not aware of any practices, procedures or products implemented since the Great Recession that would have the effect of significantly increasing the volatility of title claim loss reserves.

F. <u>Conclusion Re: Title Claim Reserves</u>

1. The NPR does not explain the basis for its conclusion that a 300 percent risk weight on claim reserves is appropriate for title insurance.

2. Claim reserves result in a deduction to capital and are critical to safety and soundness as a buffer to capital losses. It is important to encourage, rather than discourage, title insurance companies to maintain sufficient reserves.

3. Bank loss reserves are included, up to a limit, as Tier 2 capital, and no capital charge is imposed on the amount of the reserve not included as a component of capital. Title insurance reserves should be allowed the same treatment, especially since title insurance is treated under bank capital rules under the NPR.

4. Failing to include title claim loss reserves as Tier 2 capital and imposing a capital charge with a 300 percent risk weight on those reserves may have the unintended

[20] Some of the states falling into these categories include North Carolina, Utah, Mississippi, Pennsylvania, Alabama and Louisiana.

effect of inducing companies to lower reserve levels or not add sufficiently to reserves in the future.

5. Title claim loss reserve volatility is far lower than publicly traded equity volatility as demonstrated on Exhibit A.

6. Many publicly traded common equities, including S&P 500 index funds, are not given a 300 percent risk weight unless the amount of such equities held exceeds certain thresholds. The NPR would risk weight First American's title claim loss reserves higher than its portfolio of publicly traded equity securities.

7. The volatility associated with title claim loss reserves demonstrated in the Great Recession is not likely to recur even in a downturn of similar magnitude because mortgage underwriting standards and title underwriting standards and practices have changed in significant ways that reduce title claims exposure and reserve volatility.

8. If a risk weighting is to be assigned to title claim loss reserves a better analogy, based on volatility levels, is to high-yield corporate bonds which receive a 100 percent risk weight.

IV. Treatment of Title Plant Assets

Title plants are a significant asset of title insurers because they are essential to the search and examination/underwriting process that takes place in advance of issuing a title insurance policy. A "title plant" is a collection of data and records on, or which impact, title to real property. While a title search may be conducted by physically searching the abstracted information from public records (such as in a county recorder's office), utilizing a title plant that contains that information which has been abstracted from public records sources and other data sources is far more efficient. While public title records generally are indexed by reference to the names of the parties to a given recorded document, title plants primarily arrange their records on a geographic basis (such as a property address). Because of this difference, title plant records generally may be searched more effectively, in less time and with less risk of error associated with the search. Many title plants also index prior title policies, adding to searching efficiency. In short, ownership of, or access to, title plants is essential for a title insurer or a title agent in the conduct of its business.

The NPR notes that title plants are considered an intangible asset under GAAP and would deduct this asset from capital. We believe that title pants should not be deducted from capital and should receive a risk weight of 100 percent for the reasons identified below.

A. Ability to Realize Value

An ownership interest in a title plant (many of which are owned jointly among various title insurers and title agents) is readily transferable, and in fact title insurers and agents often transfer ownership interests in title plants. Unlike goodwill and many other types of intangibles, title plants are identifiable and can be sold without selling a business (or portion of a business) or other related assets. Further, under adverse financial conditions, we do not believe there is a high level of uncertainty associated with a title insurer being able to sell its title plants. Title plants will continue to be in demand as long as title insurance is utilized to protect the ownership of, and other interests in, real estate assets.

In the event that a title insurer decides to sell a title plant, it is reasonable to assume that it would receive at least the amount that is on its balance sheet, since the amount on the balance sheet represents historical cost. Under GAAP, the amount on the balance sheet for a title plant reflects the initial cost of building or purchasing the title plant. The costs associated with maintaining and updating a title plant after it is operational are expensed as incurred. Title plants may be required to be impaired if certain circumstances occur (e.g. such as failure to maintain the title plant properly). Under GAAP, the amount on the balance sheet for a title plant reflects historical cost and the plant must be maintained and current, with no indication of impairment. As such, it is reasonable to assume that a title insurer would be able to sell its title plants for at least the amount that is on the balance sheet.

B. Admitted in Surplus

The primary measure of capital under Statutory Accounting Principles (SAP) is policyholders surplus. Title plants are considered tangible assets and are reported as an admitted asset, subject to certain valuation restrictions, when calculating policyholders surplus. First American's domestic title insurers are not impacted by these valuation restrictions and therefore admit the entire amount of title plants reported on their balance sheets when calculating policyholders surplus.

The SAP guidance related to title plants is included in SSAP No. 57. Below is a relevant excerpt from paragraph 19:

"Title plants are an integrated and indexed collection of title records consisting of documents, maps, surveys, or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained. They are tangible assets (emphasis added) unique to the title insurance industry and are the principal productive asset used to generate title insurance revenue and to mitigate the risk of claims. Title plant shall be reported as an admitted asset (emphasis added), subject to the following valuation restrictions..."

C. Included in Tangible Book Value

Investors and the analysts that cover publicly traded companies in the title insurance business do not deduct title plants when calculating tangible book value. Tangible book value is an important metric for investors and analysts when valuing title insurance companies during the down part of an economic cycle, such as during the Great Recession.

D. Conclusion re: Title Plant Assets

Title plants are essential assets for title insurance companies and title agents. They are readily transferable in transactions not involving a sale of the complete business, and many potential purchasers exist. They are carried on the balance sheet at the cost of acquiring or building the plant, which is typically less than current fair market value. They are admissible assets under Statutory Accounting Principles and they are viewed by investors and analysts as part of a title insurance company's tangible book value. Therefore, we believe that title plants should not be deducted from capital, but rather should be included in the calculation of capital and receive a risk weight of 100 percent.

V. Senior Debt

It is common for ultimate parent holding companies that are not themselves insurers to issue unsubordinated senior debt to raise capital. First American, for example, routinely issues unsubordinated senior debt, the proceeds of which are available to be contributed to insurance company subsidiaries, bank subsidiaries or other subsidiaries, or may remain at the parent company level. The NAIC has issued a comment letter to the Board highlighting the importance of retaining the ability of insurance holding companies to raise capital in this manner without disincentives for doing so. Under the NPR, unsubordinated senior debt is not included as Tier 2 capital. The NAIC is currently studying the use of this funding mechanism for the purpose of its proposed Group Capital Calculation (GCC) which is expected to be finalized later in 2020.[21] The finalized GCC will likely give some capital credit for senior debt, at least under certain circumstances. We urge the Board to align with the NAIC on this issue and allow capital credit for senior debt to the extent allowed when the GCC is finalized.

VI. Capital Conservation Buffer

In addition to the minimum capital requirement, the Board is proposing a Tier 1 capital "buffer." If the buffer requirement is not satisfied, the Board may impose restrictions on dividends and bonus payments.

The NPR states that "the Board has determined to apply the Board's banking capital rule to an insurance depository institution holding company predominantly engaged in title insurance."[22]Under the Board's banking capital rule the buffer is set at 2.5 percent. However, the buffer for banking institutions is based upon a calibration of the loss experience of U.S. banking institutions and their historical capital levels, not the loss experiences and capital levels of insurance institutions.[23] If the amount of the buffer is reduced for the other insurance depository institution holding companies (which are not treated under the Board's banking capital rules), a corresponding reduction should be made for title insurance companies. Alternatively, a tailored reduction should be made based on the loss experiences of title insurance companies.

VII. Implementation Date and Attestation Requirement

Following the issuance of the rule in final form, subject companies, including First American, will have to file reports of condition that are attested to by the company's Chief Financial Officer. An excerpt of that attestation follows:

> "Regarding actual data as-of the reporting period, I, the undersigned CFO or equivalent senior officer of the named firm, attest that management is responsible for the internal controls over the reporting of these data and that these data are materially correct to the

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[21] See, https://content.naic.org/sites/default/files/inline-files/GCC%20Proposal%20%20Update%20as%20of%20Fall%20Meeting%202019.pdf

[22] 84 Fed. Reg. 57250.

[23] 78 Fed. Reg. 62034 (Oct. 11, 2013).

best of my knowledge. I attest that the internal controls for the FR Q-1 are effective and were effective throughout the year for the FR Q-1, and include those practices necessary to provide reasonable assurance as to the accuracy of these data. I attest that the controls are audited at least annually by internal audit or compliance staff, and are assessed regularly by management of supervised insurance institution. I agree to report material weaknesses in these internal controls and any material errors or omissions in the data submitted to the Federal Reserve promptly as they are identified." (emphasis added)

First American has not in the past been required to file a report in connection with an enterprise-level capital requirement. It will be a significant undertaking to put appropriate controls in place throughout the enterprise and test and audit those controls to achieve a comfort level sufficient to submit an attested report. We note that the controls are required to have been effective "throughout the year" of the applicable report (i.e., for a report submitted in March of 2021 containing 2020 financial information, the controls would have to have been in place starting January 1, 2020).

We do not believe the intent would be to require an attested submission of the FR Q-1 without a finalized rule in place at least a full calendar year prior to the first required submission of the report. We therefore urge that there be at least one full calendar year after the passing of the final rule before the submission of an attested report is required. Alternatively, the attestation requirement could be delayed and not required in connection with the first two years of the rule's effectiveness.

VIII. Conclusion

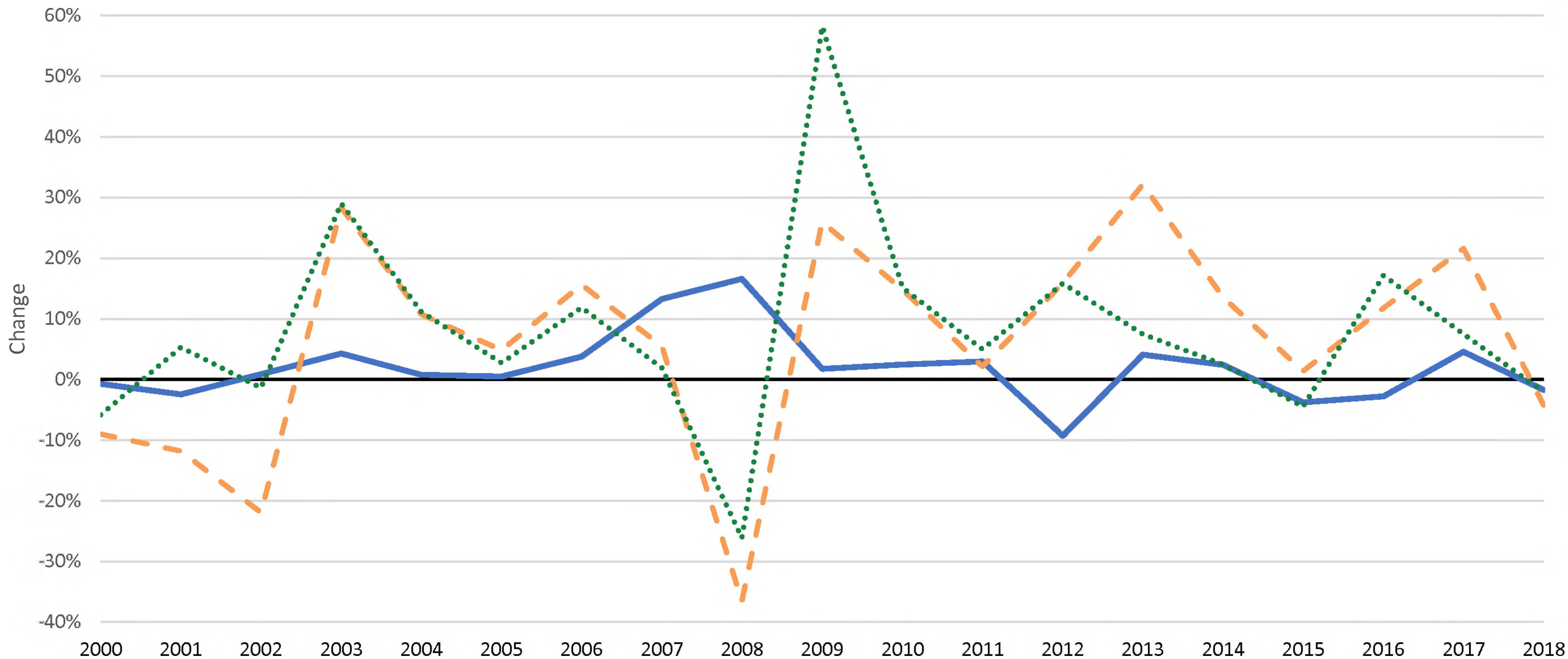
We appreciate the opportunity to submit this comment letter. If you have any questions regarding the matters addressed in the letter, please contact me at 714-250-3000 or kdegiorgio@firstam.com.

Sincerely,

Kenneth D. DeGiorgio,
Executive Vice President

Exhibit A

Title Insurance Industry Reserve Volatility by Calendar Year Compared to Macroeconomic Trends



Reserve volatility, defined as the annual change in title insurance industry estimated ultimate losses as a percentage of the prior year's ending reserve balance. First American believes this calculation to be the best measure of volatility as it represents, after the emergence of an additional year of loss experience data, what the total required reserves would have been in hindsight. Source: American Land Title Association's Year-End Industry Composite Financial Statements, 2003-2018.

S&P 500 annual returns, assuming reinvestment of dividends.
Source: NYU Stern School of Business.

Bloomberg Barclays US Corporate High Yield Total Return Index (LF98TRUU) annual returns.
Source: Bloomberg.