August 21, 2014

Mr. Robert deV. Frierson, Esq.
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Proposed Agency Information Collection Activities; Comment Request: Capital Assessments and Stress Testing Information Collection (79 Fed. Reg. 41,276 July 15, 2014 -- OMB control number: 7100–0341)

Mr. Frierson:

The Clearing House Association L.L.C. ("**The Clearing House**"), joined by The Risk Management Association ("**RMA**" and together, the "**Associations**"),[1] appreciate the opportunity to comment on the proposed revisions (the "**Proposal**") by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**") to the Instructions and Forms of the Capital Assessments and Stress Testing information collection (including Forms FR Y 14-A, 14-Q and 14-M; collectively, the "**Reports**") which would revise several schedules of the Reports and expand the reporting panel. As proposed, these revisions would become effective September 30, 2014 and December 31, 2014, as applicable.

The Associations support strong capital planning and stress testing as invaluable tools for increasing the safety and soundness of individual banking institutions and, more generally, enhancing the stability of the financial system as a whole. We recognize that the Reports form an integral part of the Federal Reserve's capital planning and supervisory stress testing process. Nevertheless, we are concerned that, as more fully described below, certain aspects of the Proposal will create serious implementation difficulties, as well as require technical corrections and clarifications, and should therefore be reconsidered.

Part I of this letter sets forth our overarching concerns regarding the Proposal, including as to the proposed timing of the implementation of the changes to the Reports and interaction with the 2014-2015 capital planning and CCAR process, the need to better align changes in the Reports with proposed changes to the Form FR Y-9C[2] and issues with respect to additional reporting of legal reserve information. We also emphasize that there are several important points of clarification and other enhancements to the Reports that need to be resolved before subject banking organizations can

[1] Descriptions of the Associations are provided in Annex A of this letter.

[2] 79 Fed. Reg. 45, 808 (Aug. 6, 2014).

implement the changes in the Proposal. Finally, this letter is also accompanied by an Annex (Annex B) containing a number of technical corrections we believe should be addressed by the Federal Reserve in the final release of the reporting forms and accompanying instructions.

## I. Overarching Concerns

### A. The Proposed Effective Dates of the Proposal Should Be Postponed to Give Banking Organizations Additional Time to Implement Changes to the Reports and Ensure that They Are Able to Effectively Provide Reliable Data in Accordance with Their Own Internal Control and Governance Processes and the Federal Reserve's Qualitative Expectations.

The Associations are concerned that the proposed effective date of September 30, 2014 for the majority of the Proposal's revisions does not afford subject banking organizations adequate time to implement these revisions in a manner that comports with their requisite internal control and governance processes. Many of the proposed changes to the Reports are quite granular and will require a great deal of time and manual effort on the part of subject banking organizations to revise their information technology infrastructure, policies, procedures and related systems in order to appropriately capture, categorize and error-check the newly required information.

For example, the Proposal calls for changes to the Counterparty Credit Risk ("**CCR**") Schedule that both increase the reporting frequency and greatly increase the magnitude of information required to be reported. Specifically, the Proposal would change the reporting frequency of the CCR Schedule from annually to quarterly, and would add a worksheet to collect derivative exposures at a legal-entity netting-agreement level for all Central Clearing Counterparty and G-7 counterparties and the top 25 non-G-7 counterparties, with a breakout of collateral into cash and non-cash and exposures into 14 asset categories (with asset sub-categories added for 30 asset types).

In addition, the Proposal would now require additional detail at the lot level regarding certain securities positions, whereas many banking organizations currently only provide data at the CUSIP level. At many subject banking organizations, positions, total cost basis and risks of a securities portfolio are aggregated and managed at the CUSIP level, and reconciling CUSIP positions by historical transaction lots is therefore not performed. Given these current business processes, readily available transaction-level lot reconciliation is not available (although this "lots" information is retained and available for each CUSIP position, it does not necessarily correspond to the actual historical transactions, because "lot" information is frequently altered by operational processes). Thus, the capability to utilize existing systems to report positions by transactional lots does not currently exist within many banking organizations' existing infrastructure, which does not allow accurate reconciliation on the security holdings at this level. Significant changes to reporting systems with additional time to ensure compliance with internal control and governance processes would be needed to adapt existing reporting processes to accommodate these proposed changes.

The currently proposed implementation dates of September 30, 2014, and December 31, 2014, as applicable, will make it very challenging to implement all of the cumulative changes to banking organizations' information technology infrastructure, policies, procedures and related systems to comply with the Proposal, especially in light of the requisite internal control and governance processes

that are essential elements of the Comprehensive Capital Analysis and Review ("**CCAR**") exercise and the Federal Reserve's related qualitative expectations. Moreover, this issue is further exacerbated by the fact that the currently proposed implementation dates overlap with the effective 2014-2015 capital planning and CCAR processes, as well as normal year-end financial reporting and related activities. As the Federal Reserve recently recognized, the capital planning and CCAR processes in and of themselves already occur at a time when banking organizations "are often resource constrained due to other financial reporting requirements."[3]

We also expect that there will likely be other, more granular clarifications and/or modifications to the Reports that will likely be necessary for proper implementation of the Reports required by the Proposal. It is therefore also likely that the Frequently Asked Questions ("**FAQ**") process with subject banking organizations also will be needed.[4] As such, allowing time to accommodate this important process for resolving technical and clarification issues in the Proposal further underscores the need for a delayed implementation of the Proposal.

As such and subject to the pending implementation of the proposed revisions to Form FR Y-9C as discussed below, we urge the Federal Reserve to delay the Proposal's effective date to, at minimum, no earlier than six months after the final rule is published – *i.e.*, after the submission of the required capital plan under 12 CFR § 225.8 for 2015. We respectfully submit that doing so will enhance the quality and robustness of the Reports and of the CCAR process more generally by allowing banking organizations sufficient time to properly implement the many necessary changes to their systems and reporting infrastructure in order to complete the revised Reports.

B. <u>The Proposed Conforming Changes Based on Recently Proposed Changes to the FR Y-9C Should Be Adopted Simultaneously with the Changes to that Form</u>.

The Associations appreciate that several of the proposed revisions are intended to better align and increase consistency between the Reports and the FR Y-9C. Since the FR Y-9C Schedule HC-R collects regulatory data on (1) Tier 1, Tier 2 and total capital and regulatory capital ratios and (2) risk-weighted assets, many of its components overlap with elements that are reported on the FR Y-14 forms. The Proposal notes that, based on additional proposed changes to the FR Y-9C, the Federal Reserve may

---

[3] Amendments to the Capital Plan and Stress Test Rules, 79 Fed. Reg. 37420, 37421 (July 1, 2014).

[4] More particularly, the reporting frequency and content for the CCR Schedule in the proposed FR Y-14A and 14Q require further clarification, as well as the materiality threshold of the FR Y-14Q. Information required in the second quarter as part of the Mid-year Monitoring Report and on the FR Y-14A during the third quarter appears in the Proposal to now be required on the FR Y-14Q report in addition to these current requirements. This duplication apparently results in reporting the same information a total of six times each year. We recommend (i) eliminating the reporting of this information on the Mid-year Monitoring Report, since this requirement can be fulfilled by the second quarter FR Y-14Q submission, and (ii) eliminating the reporting of this information on the third quarter FR Y-14Q, since this requirement can be fulfilled by the FR Y-14A submission during that quarter. Further, the Investment Securities with Designated Accounting Hedges Template includes the attributes "Effective Portion of Cumulative Gains and Losses" and "Ineffective Portion of Cumulative Gains and Losses"; we believe that the attributes should be based on the current period and or year-to-date gains and losses as they are more closely aligned with performance of the hedge.

need to further modify the Reports to ensure they remain consistent.[5] Indeed, the Federal Reserve proposed changes to Form FR Y-9C[6] on August 6, 2014 – after release of the Proposal – which would, among other things, revise Schedule HC-R, which is referenced in the Proposal's instructions for completing Tier 1 capital and total capital components.[7] We believe that the changes in the Proposal should be postponed and adopted concurrently with the recently proposed changes to the FR Y-9C, but, as described above, in no event earlier than six months after the final rule is published. Making the relevant parts of the Proposal effective simultaneously with changes to the FR Y-9C will allow banking organizations to avoid the unnecessarily duplicative efforts required to make successive changes to their reporting systems and infrastructure as each report, although inherently linked, is separately modified and then brought into conformity with the other.

C. The Federal Reserve Should Not Adopt the Proposed Changes to the Operational Risk Schedule Requiring Additional Reporting of Litigation Reserve Information.

As the Associations and other industry participants have previously submitted to and discussed with the Federal Reserve,[8] we are particularly concerned that, as a general matter, extensive reporting of litigation reserve-related information to the Federal Reserve has the potential to be very damaging to banking organizations "whenever they are defendants in litigation, irrespective of the merits of the claim, and thus inimical to the safety and soundness of the banking system."[9] Disclosure (inadvertent or

---

5 Footnote 2 to the Proposal states that "the Federal Reserve may modify the proposed revisions to the FR Y-14 report prior to finalization of this proposal as appropriate and consistent to align with any additional changes being considered to the FR Y-9C report."

6 79 Fed. Reg. 45, 808 (Aug. 6, 2014).

7 Specifically, the new Capital and Risk-Weighted Asset ("RWA") Schedules refer to FR Y-9C line items that are no longer completed by advanced-approach bank holding companies, and the instructions for Market RWA in the Advanced RWA worksheet of the FR Y-14A Summary Template refer to the market risk instructions for the General RWA summary worksheet, which requires a different definition of market risk (Basel I versus Basel II). This particular schedule on the FR Y-9C follows the general risk-based capital rules that will be eliminated beginning with the March 31 reporting deadline to conform to the revised regulatory capital rules (78 FR 62018 (Oct. 11, 2013)). Thus, if implementation of the Proposal is not delayed to conform the FR Y-14 schedules accordingly, the fourth quarter FR Y-14 Reports will not be comparable in this aspect to the report of any prior or subsequent reporting period. In line with the Agencies' intent to revise both the Summary and Regulatory Capital Transitions schedules to be consistent with schedule HC-R of the FR Y-9C, we believe that BHCs should not be required to provide capital projections beyond the 5 percent Tier 1 common ratio required in the capital plan rule (assuming the Federal Reserve does not eliminate the Tier 1 Common ratio requirement for capital planning and stress testing purposes; *see,* The Clearing House Association L.L.C., *Proposed Amendments to the Capital Plan and Stress Test Rules*, Comment Letter to the U.S. Banking Agencies, Aug 11, 2014). Calculating projections of Tier 1 capital and total capital based on the general risk-based capital rules exclusively for purposes of completing the FR Y-14A creates an additional, unnecessary burden on the BHCs and is inconsistent with their other reporting requirements.

8 *See* The Clearing House Association L.L.C., *FR Y-14A/Q/M Capital Plans; Proposed Agency Information*, Comment Letter to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, Aug. 6, 2012.

9 *Id.*, at 1.

otherwise) would create fundamental unfairness for bank defendants, most clearly in the case of claims by the Federal Reserve itself and claims of other Governmental agencies, but also more broadly. As we have previously discussed with the Federal Reserve, we believe that disclosure of confidential litigation reserve information will threaten the safety and soundness of banking institutions.

Even when reporting of additional information with respect to litigation reserves is done on a confidential basis and taking into account the Federal Reserve's strong record of maintaining confidentiality, the real risk remains that the Federal Reserve may nonetheless "be obligated to, or feel itself to be obligated to, release information to others that have demonstrated less care in protecting confidential bank information."[10] We further note that the Federal Reserve cannot provide assurances to subject banking organizations that it will not provide the confidential litigation reserve information to Congress or other Government authorities, as we have previously noted.

The newly requested information on historical reserves under the Proposal would allow third parties who may obtain access to this information to gain unwarranted insights and understanding of subject banking organizations' reserving practices and related litigation strategies. Such insights could be very easily applied by adverse parties to gain an unfair advantage in current and future controversies involving these banking organizations and would therefore undermine and be extremely detrimental to the banking organization's position in potential settlement negotiations. Potential adverse parties may include, but are not limited to, the Consumer Financial Protection Bureau ("**CFPB**") and the Federal Reserve itself, if the banking organization is in litigation with, or under investigation by, a government agency. Tracking each subject banking organization's reserving history and terminal outcomes for historical litigation may allow third-party litigation adversaries who obtain such information to reverse engineer the ways in which the banking organization analyzes its own assessments of its vulnerability, thereby virtually destroying the banking organization's ability to defend itself – even in instances in which only historical information is disclosed. In short, once an adversary gains an understanding of the way the bank has historically reserved for various pending litigation matters at different stages in the process and, based on such insight, can arrive at a good estimate of such reserves, the banking organization's ability to argue for damages below the amount of the reserve would be severely compromised in the course of settlement negotiations or otherwise. This situation is even more acute where multiple separate suits and other actions arise out of a related set of circumstances and one particular litigation is settled while other related actions remain open. Accordingly, "a bank that establishes its litigation reserves conscientiously and conservatively would place itself at a serious financial and competitive disadvantage"[11] if the amounts of their historical litigation reserving practices were used to build projections and thereby predict reserves for pending litigation.

In addition, a further significant concern previously raised by The Clearing House arises from the inevitably substantial attorney input into the determination of litigation reserves. Our adversary system requires that rules which govern the information obtainable by each party in adversarial litigation remain even-handed. This is the reason our legal system includes protections for attorney work product. In planning for litigation, it is common to consider its impact both inside and outside the

---

[10] *Id.,* at 2.

[11] *Id.,* at 2.

courtroom – *i.e.*, in determining how much should be reserved in the banking organization's financial statements. The Proposal requires subject banking organizations to report reserve-related decisions made throughout the life of a given legal event, including both initial amounts and subsequent adjustments, and the relative dates of each. Because this information relates in each instance to an actual controversy, the thought processes and materials prepared as a part of the evaluation and planning for litigation reserves should not be required to be provided to potential adversaries. If the possibility or existence of a controversy is the cause for creation of documentation, that documentation and the thought processes behind it are protected as attorney work product. The legal analyses used to determine whether and how much to reserve for litigation contingencies by definition analyze the likely results of anticipated or ongoing litigation. The fact that the information becomes "historical" once a given matter has been concluded does not alter this fact. "The individual reserve figures reveal the mental impressions, thoughts and conclusions of an attorney in evaluating a legal claim."[12] As discussed above, not only is the historical work product protected by attorney-client privilege, but so also is the analyses underlying the historical practices that may be highly instructive to adverse parties in predicting current and future reserving practices in other, pending, matters. The Proposal therefore threatens to upset this informational balance and the Federal Reserve should remain cautious in seeking such information and infringing upon those rights.

Finally, we note that the Proposal calls for changes to litigation reserves reporting that will greatly increase the level of detail required to be reported. The granularity of the information sought under the Proposal is both operationally difficult for banking organizations to provide and impractical at the requested level of disaggregation. For example, the Operational Risk Schedule would be revised by collecting, for each closed or settled legal event above $250,000, the (a) date of awareness, (b) date on which a claim was filed, proceedings were instituted, or settlement negotiations began, (c) date of settlement, fine or final judgment, (d) cause of action, (e) reserve history and (f) terminal outcome. We are quite concerned with the operational difficulties necessarily involved in collecting and providing this information. For example, the proposed threshold of $250,000, in combination with the proposed claim-related dates requires disaggregation of data currently tracked, collected and reported at a much higher level of aggregation and typically as a single, consolidated line item. Requiring dates, *i.e.*, "date of awareness" of a claim, which refers to the date on which the organization became aware of the legal or regulatory matter, asks banking organizations to begin reporting items not currently tracked. This granular data will be both ambiguous and impractical to provide.

Given the many substantive and practical concerns inherent in reporting the information sought under the Proposal for litigation reserves, The Clearing House urges that the Federal Reserve not adopt the Proposal as it concerns litigation reserves reported on the Operational Risk Schedule.

* * *

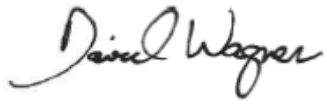
The Associations appreciate the opportunity to provide comments on the Proposed Rule. We greatly appreciate your consideration of our comments and would welcome the opportunity to discuss them further with you at your convenience. If we can facilitate arranging for those discussions, or if you

---

[12] *Simon* v. *G.D. Searle & Co.*, 816 F.2d 397, 401 (8th Cir. 1987).

have any questions or need further information, please contact David Wagner at (212) 613-9883 (email: david.wagner@theclearinghouse.org) Ed DeMarco at (215) 446-4052 (email: edemarco@rmahq.org) or Ryan Pozin at (212) 613-0135 (email: ryan.pozin@theclearinghouse.org).

Respectfully Submitted,



David Wagner
Executive Managing Director and Head of Finance Affairs
*The Clearing House Association L.L.C.*

Edward DeMarco, Jr.
General Counsel and Director of Operational Risk & Regulatory Relations/Communications
*The Risk Management Association*

cc: The Honorable Daniel K. Tarullo
*Board of Governors of the Federal Reserve System*

The Honorable Thomas J. Curry
*Office of the Comptroller of the Currency*
The Honorable Martin J. Gruenberg
*Federal Deposit Insurance Corporation*

The Honorable Mary Miller
*Department of the Treasury*

The Honorable Sarah Bloom Raskin
*Department of the Treasury*

Michael Gibson
*Board of Governors of the Federal Reserve System*

Mark E. Van Der Weide
*Board of Governors of the Federal Reserve System*

Arthur W. Lindo
*Board of Governors of the Federal Reserve System*

Timothy Clark
*Board of Governors of the Federal Reserve System*

Anna Lee Hewko
*Board of Governors of the Federal Reserve System*

Connie Horsley
*Board of Governors of the Federal Reserve System*

Lisa Ryu
*Board of Governors of the Federal Reserve System*

Cynthia Ayouch
*Board of Governors of the Federal Reserve System*

Robert Scavotto
*Office of the Comptroller of the Currency*

Ryan Sheller
*Federal Deposit Insurance Corporation*

Jason Cave
*Federal Deposit Insurance Corporation*

Bob Bean
*Federal Deposit Insurance Corporation*

Amias Gerety
*Department of the Treasury*

Matthew Rutherford
*Department of the Treasury*

Beverly Hirtle
*Federal Reserve Bank of New York*

Andrew Gladin
*Sullivan & Cromwell LLP*

Sarah Flowers
*Sullivan & Cromwell LLP*

Ryan Pozin
*The Clearing House*

The Clearing House. Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing – through regulatory comment letters, amicus briefs and white papers – the interests of its owner banks on a variety of important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily which represents nearly half of the automated clearing-house, funds transfer, and check-image payments made in the United States. *See* The Clearing House's web page at www.theclearinghouse.org.

RMA. RMA is a 501(c)(6) not for-profit, member-driven professional association whose sole purpose is to advance the use of sound risk principles in the financial services industry. RMA helps its members use sound risk principles to improve institutional performance and financial stability and enhance the risk competency of individuals through information, education, peer-sharing and networking. RMA has 2,600 institutional members that include banks of all sizes as well as nonbank financial institutions. They are represented in the Association by more than 16,000 risk management professionals who are chapter members in financial centers throughout North America, Europe, and Asia/Pacific.

## Technical Corrections and Enhancements

In addition to the foregoing overarching issues and clarifying questions, we also submit the following suggestions for technical corrections and amendments to the Reports set forth in the Proposal:

**FR Y-14A Summary Template**

Some formulas for totals and ratios have been removed throughout the worksheets to the Reports but not in a consistent manner – bank holding companies ("**BHCs**") are likely expected to include formulas themselves.

A. Balance Sheet Worksheet

- Item 110 (excel row 126): #REF! error**;**
- Inconsistent instruction: Worksheet states that when a "supervisory baseline scenario" is selected on the cover sheet, the Balance Sheet Worksheet should tie to "Capital – DFAST" Worksheet; however, other guidance from July 2014 instructs filers to tie Summary Schedule Worksheets to "Capital – CCAR" Worksheet.[13]

B. General RWA

- Cell A1 (the title of the worksheet): #REF! error.

C. Standardized RWA

- Cell A1 (the title of the worksheet): #REF! error;
- Item 6: shaded and locked cells with no formulas;
- Formula error: Item 22 "RWA for Derivatives and off-balance sheet asset categories" includes "RWA for Balance Sheet Asset categories" (on balance sheet);
- Formula error: Instructions for Item 40 as the sum of 9a, 9b, 10, 24 and 26 is incorrect. Formula should be sum of 11, 22 and 39;
- Line item 9d (All other on-balance sheet securitization exposures) from the Proposed Revised Call Report Schedule RC-R Part II instructions is missing from the FR Y-14A template;
- Part II of schedule RC-R contains line item 10 (off-balance sheet securitization exposures) and is clear in its instructions that derivatives and off-balance sheet items in line items 12 through 21 should exclude securitizations. The Y-14A template does not have a line item for off-balance sheet securitization exposures and does not contain the instructions that derivatives and off-balance sheet items in line items 12 through 21 should exclude securitizations. In an effort to

[13] All previous FAQ responses should be incorporated into the final instructions/templates.

synchronize the Y-14A template with schedule HC-R of the FR Y-9C (or RC-R of FFIEC 031 and 041), the Agencies should add an additional line item in the Y-14A template for off-balance sheet securitization exposures and note that they should be excluded from line items 12 through 21, consistent with the RC-R.

D. Advanced RWA

- Numbering in instructions does not match the numbering on the template (*e.g.* Total RWA is listed as line item 81 in the instructions and 88 on the template).

E. Capital (CCAR and DFAST)

- Formula error: Item 87: formula adds Tier 1 capital to Tier 2 capital for advanced approaches BHCs that exited parallel run – if BHCs do not fill out parallel run items, there won't be any Tier 2, but the Tier 1 amount will still be reflected, understating total capital (also item 116). A statement to show 0 if Tier 2 items are 0 should be added;

- Line item 117 (Total risk-weighted assets using the general risk-based capital rules) states that "this item is derived from the FR Y-14a, Standardized RWA worksheet item 49." The instructions should be modified to reference the appropriate line item from the General RWA worksheet, as opposed to the Standardized RWA worksheet.

- Line item 118 (Total risk-weighted assets using standardized approach) should be corrected to reference the appropriate line item on the Standardized RWA worksheet, as opposed to the General RWA worksheet;

- Line item 121 (Tier 1 Common ratio (based upon generally applicable risk weighted assets)) and line item 122 (Common Equity Tier 1 ratio) both reference line item 117 (RWA using the general risk-based capital rules; reflective of Tier 1 Common capital deductions and adjustments). In 2014, the denominator of the Common Equity Tier 1 ratio reported on line item 122 should be RWA using the general risk-based capital rules, reflective of Common Equity Tier 1 (revised risk-based) capital deductions and adjustments;

- Items 124 and 126 Tier 1 capital and total capital) do not specify whether to use general or revised risk based rules (Instructions say either-or);

- Item 148: Formula but no instructions are provided.

F. Trading Worksheet

- Cell G14 (CVA Hedges Total for Cross-Asset Terms) should be outlined to indicate that it is a reported item.

**FR Y-14A Regulatory Capital Transitions Template**

A. Capital Composition

- Accumulated other comprehensive income ("AOCI") in items 10-14 has to be zeroed out to pass data completeness check even if AOCI opt out election is chosen.

B. Planned Actions

- Dropdowns for Action type, Exposure type and RWA type do not work;

- Excel Row 109 – "Reported changes from prior period" takes difference between current quarter and prior quarter; the formulas for the cells for "Total Assets for Leverage Ratio" (cell J109) and "Total Leverage Exposure for Supplementary Ratio" (cell K109) contain #REF! errors.