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February 14, 2011

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

The Honorable Sheila C. Bair
Chairman, Federal Deposit Insurance Corporation
550 17th St, NW
Washington, DC 20429

The Honorable John Walsh
Acting Comptroller of the Currency
Department of the Treasury
250 E Street, SW
Washington, DC 20219

Re: Joint Notice of Proposed Rulemaking on Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II; Establishment of a Risk-Based Capital Floor (FRB Docket No. R-1402 and RIN No. 7100-AD62; FDIC PIN XXXX-XXXX; OCC Docket ID OCC-2010-0009)

Dear Chairman Bernanke, Chairman Bair and Comptroller Walsh:

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. On behalf of all our members, we appreciate the opportunity to submit comments on the Joint Notice of Proposed Rulemaking (JNPR) referenced above.

The purpose of this proposed rule is to make certain changes to existing regulations in order to begin implementing section 171 of the Dodd-Frank Act (DFA). As the proposed changes are necessary in order for the agencies to carry out the requirements of DFA section 171, we have no direct commentary on these changes. However, we do wish to offer commentary for your consideration on section I. E. of the Supplementary Information provided as part of the JNPR.

Supplementary Information section I.E. of the JNPR is entitled *"Effect of Section 171 of the Act on Certain Institutions and Their Assets"*. It discusses the fact that certain depository institution holding companies and nonbank financial companies designated for supervision by the Federal Reserve Board under section 113 of the DFA that are subject to section 171 have not previously been subject to these bank capital requirements, and may hold assets that do not have a specific risk-weight assigned to them under generally applicable bank risk-based capital requirements. Section I.E. notes that under existing bank risk-based capital requirements, assets that do not have a lower risk-weight (i.e. 0 percent, 20 percent or 50 percent) assigned to them will by default be assigned a 100 percent risk-weight. It states further that, going forward, there may be situations where exposures of a depository institution holding company or a nonbank financial company, or affiliates of such companies, do not fit within the terms of the existing bank risk-weighting categories but also impose risks that are not commensurate with the risk-weight otherwise specified. Specifically, section I.E. states:

> For example, 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.

We believe this is a very important observation on the part of your agencies, and one whose import we wholeheartedly support. We have significant concerns with the possibility that the bank capital rules provided for in section 171 could be inappropriately applied to life insurance companies. As was indicated in the 2002 joint report of the Federal Reserve Board and the National Association of Insurance Commissioners on risk-based capital, the differences between bank capital rules and the insurance industry's risk-based capital rules cannot be harmonized simply by changing the nominal capital charges on individual assets. Simply put, the existing components of capital in the bank risk-based capital rules do not align with the elements of capital in the risk-based capital regime applicable to insurance companies.

We also believe strongly that, in addition to being highly inappropriate, it makes no regulatory sense to apply these bank rules to insurers. Forcing an insurer to unnaturally contort itself in order to make these bank standards 'fit' will do nothing more than provide a completely inaccurate and misleading picture of the company to regulators. Insurance companies are not banks. The liabilities and obligations of the two types of entities are very different, and so their capitalization and reserving requirements must be very different as well. We believe it is essential that your agencies recognize these fundamental differences when implementing section 171.

Accordingly, we believe that any capital rules applied as a result of section 171 to depository institution holding companies and nonbank financial companies that have significant insurance operations and subsidiaries must take account of the different asset and liability categories in an insurance operation. We believe the best and most fundamental way to accomplish this is to recognize and accept to the greatest extent possible insurer risk-based capital standards as equivalent for this purpose. As noted above, doing so would be in keeping with the past findings of the Federal Reserve Board on this very issue.

In addition, we believe it is useful to identify asset classes that are held by insurers that have no banking-industry equivalent and therefore do not fit within the terms of the existing bank capital risk-weightings. Doing so will illustrate that such asset classes should not be automatically assigned a 100 percent risk weight category, but instead should be given special consideration because they are, in fact, necessary and appropriate classes of assets to be held by life insurers. Separate account assets are one example of an insurer asset class with no comparable match in the banking world. As such, they must be given special consideration when applying section 171.

For example, we believe separate account assets should not be included in the Tier 1 Leverage Ratio calculation. This ratio is calculated by taking Tier 1 capital as a percentage of the total average quarterly assets. Separate accounts support variable insurance products, which are designed to allow policyholders to benefit from and bear the risk of financial market investments. Since separate accounts pose no investment risk to the insurer because the policyholder has agreed to bear the investment risk under the contract, requiring them to be included in this calculation significantly inflates the total asset balance and therefore applies undue downward pressure to this ratio. This places insurers at a considerable disadvantage when comparing their leverage ratios to those of banking entities where such asset types don't exist. Similarly, the unique nature of separate accounts means they should be risk weighted at 0% for purposes of computing the Tier 1 and Total Risk Based Capital Ratios. Regarding guaranteed separate account assets, a "look-through" approach should be applied whereby the underlying assets of such accounts are risk weighted accordingly based on the type of assets.

Like separate accounts, we believe there are other assets that should be given special consideration in any application of section 171 to life insurance enterprises. Companies are currently analyzing the issue in order to provide regulators with greater detail on various asset classes as discussions on this issue continue. We are hopeful that you will provide us an opportunity to share the result of this analysis with you as you prepare for eventual implementation of section 171.

Finally, although the rulemaking does not address accounting issues, a number of our members have expressed concern on whether banking regulators in implementing Section 171 intend to require the use of Generally Accepted Accounting Principles (GAAP) for insurers now subject only to preparing statements utilizing Statutory Accounting Principles (SAP). Similar to how the Federal Reserve currently allows foreign banking organizations to file annual report financial statements using the local accounting practices of the country in which the foreign banking organization's head office is located (see., e.g., Federal Reserve's General Instructions for Preparation of the Annual Report of Foreign Banking Organizations - Form FR Y-7) and the Office of Thrift Supervision allows SAP financial statements from a number of insurer savings and loan holding companies who do not use GAAP, we would urge that such an approach apply to Section 171 requirements as well.

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

CC: Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System

Robert E. Feldman
Executive Secretary, Federal Deposit Insurance Corporation

Mark Ginsberg
Risk Expert, Office of the Comptroller of the Currency