October 22, 2012

Office of the Comptroller of the Currency (the "OCC")
250 E Street, S.W.
Mail Stop 2-3
Washington, D.C. 20219
E-mail: regs.comments@occ.treas.gov
Re: OCC Docket ID OCC-2012-0008 and OCC Docket ID OCC-2012-0009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System (the "Board")
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
regs.comments@federalreserve.gov
Re: Docket No. R-1430; RIN No. 7100-AD87; and Docket No. R-1442; RIN No. 7100 AD 87

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation (the "FDIC")
550 17th Street, N.W.
Washington, D.C. 20429
E-mail: comments@FDIC.gov
Re: FDIC RIN 3064-AD95 and FDIC RIN 3064-AD 96

Via Electronic Mail

Ladies and Gentlemen,

The undersigned regional banking organizations would like to take this opportunity to provide comments to the OCC, the Board and the FDIC (collectively, the "Agencies") with respect to the notices of proposed rulemaking that revise the regulatory capital rules. This comment letter will address both the standardized approach for risk-weighted assets, market discipline and disclosure requirements published in the Federal Register on August 30, 2012 (the "Standardized Approach PR" addressing capital ratio denominator issues) and regulatory capital, implementation of Basel III, minimum capital ratios, capital adequacy, transition provisions and prompt corrective action, published in the Federal Register on August 30, 2012 (the "Capital PR", addressing capital ratio numerator issues, together with the Standardized Approach PR, the "NPRs"). We note that each of the undersigned regional banking organizations has total assets between $50 and $300 billion and would be subject to the Standardized Approach PR (either generally or as a floor with respect to the Advanced Approach[1]), absent any changes to the contrary in the final rule.

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1 The notice of proposed rulemaking entitled "Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule" ("Advanced Approach") applies only to those banks with at least $250 billion of assets

The NPRs list several requests for comments from the industry. In this letter, the undersigned regional banking institutions intend to comment on the following aspects of the NPRs:

- Scope of the NPRs;
- Need for a Quantitative Impact Study;
- Proposed Rules for Residential Mortgages;
- Proposed Rules for High Volatility Commercial Real Estate Exposures;
- Proposed Rules with respect to Accumulated Other Comprehensive Income;
- Capital Conservation Buffer;
- Minority Interest Rules and Their Application to REIT Preferred Securities;
- Additional Tier 1 Instruments;
- Investments in Asset-Backed Securities ("ABS") and Mortgage-Backed Securities ("MBS"); and
- Implementation Timeframe for NPRs

Scope of the NPRs

The NPRs would apply to all U.S. banks whether or not they are internationally active. This approach – that capital rules for all U.S. banks operating domestically are the same – is consistent with the current approach which has applied to such banks for decades. All such banks would use the same definitions for each type of capital, would be governed by the same capital requirements, and, for a given type of risk, each bank would be required to hold the same amount of capital for that risk.

The undersigned institutions support this approach. A common theme to most of our comments in this letter is that a regulatory system should be consistent, and should ensure that banking institutions have sufficient capital to support their risks and that those risks should attract the capital that is appropriate for and consistent with those risks. Capital rules that do not apply broadly where risks are similar would inevitably lead to concentration of risks where the rules do not apply. This potential to shift capital and risk applies both across asset classes and across institutions. Additionally, if risk-weightings are not truly correlated with actual risks, risks would shift inappropriately within banks or to and from the banking industry to the "shadow banking" sector that is less regulated and more difficult to regulate.

In this context, by continuing the long-standing practice of applying U.S. regulatory capital rules consistently and ensuring that all U.S. banking institutions maintain the same amount of capital for the same behaviors, the undersigned believe the proposed applicability of the Agencies' rule would have the tendency to address the potential for risk to flow from one set of banks to another. Therefore, the undersigned support a standard set of capital rules applicable to all U.S. banking institutions and do not believe there is any basis for applying such a standard set of rules to some banks but not others. Standard or generally applicable rules attributing risk in proportion to where risk is present would be consistent, appropriate and fair when applied to all U.S. financial institutions, large and small.

While all banks should be governed by the same set of rules – with the impact sensitive to and tied to risks – the undersigned do recognize that smaller banks have less immediate market access to capital to remediate negative results of new rules. It may be possible that a minority of smaller banks

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("Advanced Approaches Banks").

may find themselves capital deficient as a result of those new rules. Therefore, we would support a delay in the application of the Capital PR for smaller banks until January 1, 2015 (the proposed date for implementation of the Standardized Approach), or until the Standardized Approach becomes a final rule otherwise. Also see "Implementation Timeframe for NPRs" at the end of this letter. The undersigned believe the Standardized Approach PR, when instituted, should be implemented at the same time for all U.S. banking organizations, as it is intended to ensure that each institution's risks are reflected in its risk-weighted balance sheet.

The Agencies have asked for comment about whether the rules should be optional for some banks. The undersigned do not see how optionality would ensure that banks would risk-weight similar risks the same way. The undersigned are also not sure how optionality could be permitted when combined with the requirement of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") Section 171 that all U.S. banking organizations have capital that at least meets the "generally applicable" requirements.

The application of the Standardized Approach PR would impose significant burdens on all banks, large and small. This burden would be largely scaled to the size of the firm's activities and the nature of the firm's activities. The burden of data collection and reporting compliance would differ for each of the signatories and would be dependent on the nature of the final rule. However, the undersigned want to emphasize that the much more significant burden of the Standardized Approach PR would be the attribution of capital disproportionate to actual risk and the resultant disruption to businesses, particularly for mortgage and home equity lending. The proposed rules would overturn standard risk assumptions, which are discussed later in this letter. They would require significant and sweeping changes in product design. The undersigned believe they would reduce revenue due to lower mortgage and home equity lending. They would result in the shifting of customers from one firm to another (as, for example, we believe would result from the proposed home equity rules, as later discussed). These costs – in personnel and systems costs and in economic costs – would have much more significant and negative impact than the costs of data collection and reporting, large as they would be. The majority of the customers of the undersigned banks are consumers and small businesses, and they also would bear the burden of costs that result from changes in product pricing and disruption and realignment of normal credit flows as a result of the application of the Standardized Approach PR.

Therefore, it is all the more important that the Standardized Approach PR be designed to meet the needs of all U.S. banks - so that risk-weights are appropriate and not overly punitive, so that its reporting burdens are not inordinate, and so that it works for all banks large and small. This outcome would ensure that all banks would be governed by appropriate capital requirements given their risk, ensure that activities in the U.S. banking sector are consistently treated, and ensure that all banks comply with the Dodd-Frank Act. We would note that, in particular, mortgage lending and commercial construction lending are core activities for virtually all U.S. banks. It is critical that capital requirements for these activities be consistent in their sensitivity to them, across the U.S. banking sector, to ensure that risks do not concentrate themselves in institutions opting out of the Standardized Approach, due to its application.

Need for a Quantitative Impact Study

While consistency in application of the rules is important, equally important is prudence in the application of these rules. The NPRs propose a dramatic change in regulatory capital requirements that, for most of the undersigned and most U.S. banks, have not changed materially since 1989 when the first Basel accord was adopted by the Agencies. Because these changes are so dramatic, the undersigned request that the Agencies perform a Quantitative Impact Study ("QIS") of these changes before enacting them. The undersigned note that before the Agencies issued a final rule in 2007 on the Advanced Approach, at least four (4) QISs were commissioned over a period of several years to study the likely effect that the rule would have both to financial institutions and the broader economy. The undersigned believe that similar studies should be performed with respect to the NPRs which, by their design and scope, will affect a far greater number of financial institutions and are much more complex than the current rules.

The undersigned believe a QIS would benefit both the Agencies and banks. The NPRs, as proposed, create a number of significant issues. While the undersigned propose changes to the rules to address some of those issues here, the changes proposed by the undersigned are largely those instances that the undersigned believe involve clear disconnects between actual risk and the NPRs. The undersigned believe a more appropriate calibration of risk which the NPRs are intended to address would find empirical answers in a QIS or at least better evidence from which to form conclusions. Those findings would inform better calibrated risk-weightings for re-proposed capital rules.

For example, this letter addresses certain issues associated with basing the mortgage risk-weighting framework on only loan-to-value metrics and a single structural criterion (i.e. the introduction of categories 1 and 2). A QIS would determine whether this attribution of significantly elevated risk is warranted (the undersigned believe it is not) and allow calibration of risk and risk-weightings on these or other risk factors that may be reflective of significant risk. The undersigned believe the Standardized Approach PR would particularly benefit from such a study and subsequent re-proposal – especially since it is not part of international agreements regarding new capital rules and there has never been a study of its appropriateness or potential impact in the U.S. The undersigned believe the impact would be significant – it would lead to substantial additional capital requirements for most U.S. banks, on top of the Basel III Capital PR, and would necessarily have a considerable effect on lending and economic activity.

A QIS is necessary to calibrate the Standardized Approach PR against the Advanced Approach, particularly for mortgage and commercial real estate lending. The undersigned believe that the Standardized Approach PR is significantly more punitive than the Advanced Approach with respect to mortgage and home equity lending - core businesses for all U.S. banks large and small. The Standardized Approach PR includes "Category" distinctions that create significant cliff effects, for specific product features, that are oversensitive to risk in a way that the Advanced Approaches is not.[2] The Advanced Approach banks would only be constrained by the Standardized Approach PR if, when applied to their aggregate balance sheet, it produced higher capital ratios than the Advanced Approach. This seems unlikely given the capital markets activities of the largest firms. As a practical matter,

2 We expect that simply applying the Standardized Approach PR to mortgage and home equity assets would produce higher risk-weightings for those assets for virtually all banks than applying the Advanced Approach or Basel I. This expectation should be examined by a QIS comparing the three (3) approaches against the risks currently present on bank balance sheets.

therefore, it would appear that the impact of the Standardized Approach PR as currently proposed would not constrain the mortgage lending activities of the very largest U.S. banks, but would significantly constrain mortgage lending and the relative competitiveness of those firms to whom it will newly apply (i.e., more traditional regional and community banks). It is critical that the risk sensitivity of the Standardized Approach PR for mortgages and home equities produce generally consistent outcomes relative to the Advanced Approach to ensure that these core and important businesses are not competitively and significantly disrupted by inappropriately significant differences in capital treatment – whether those differences are between it and the Advanced Approach framework or between it and Basel I. As the Advanced Approach framework has been calibrated among the largest U.S. banks and internationally, this is another reason that the undersigned believe it is the Standardized Approach PR that is overly risk-sensitive. This issue of competitive impact would obviously also apply with respect to ensuring that generally applicable capital standards are generally consistent for all U.S. banks, large or small.

A complete and published study would inform (i) the Agencies, banks and the public what the anticipated impact of the rule may be to financial institutions and the economy, (ii) whether the rules truly reflect the risk of the covered activities, and (iii) how best to craft rules so that they work appropriately for all banking organizations and address the needs of the U.S. financial markets.

Proposed Rules for Residential Mortgages

In general, the undersigned approve and support the arguments and proposals set forth in the American Bankers Association, Financial Services Roundtable, and Securities Industry and Financial Markets Association joint trade association letter (the "Joint Trades Letter") regarding the proposed new rules for the treatment of residential mortgages, including home equity loans. We recognize that during the crisis, many factors contributed to losses higher than historically experienced, including a loosening of credit standards with respect to loan structures (e.g., option adjustable rate mortgages, low or no document loans); higher loan-to-value ("LTV") lending; broader access by borrowers to the equity in their homes, through first and second mortgages; and the effect of an historic boom in residential real estate prices.

We agree in principle with both the concept that certain types of residential mortgage exposures should receive higher risk-weightings than others and that higher LTV loans should receive higher risk ratings than lower LTV loans. However, while the rules attempt to increase the sensitivity of capital requirements to risk (presumed to be related to the presence of certain features in various residential mortgage products), the application of the proposed rules would result in very different requirements for exposures with similar risk. The Standardized Approach PR ignores the role of underwriting in general, particularly with respect to the single risk factors that result in punitive treatment under the rules (the risk factors that automatically shifts a mortgage to "Category 2"[3]).

The undersigned believe that the Standardized Approach PR assigns risk-weightings that are higher than justified for a given LTV. Moreover, the Standardized Approach PR treats all loans with certain features as high risk even when higher risk is not present or may be mitigated significantly through underwriting and ensuring that such loans are offered only where appropriate for a borrower

3 References to "Category 1" and "Category 2" mortgages shall have the same definitions for those terms as in the Standardized Approach PR.

choosing that structure. There have been public comments that even the cost of traditional, fully amortizing, well-underwritten fixed-rate mortgages would increase under the application of the NPRs.[4] The Standardized Approach PR is also punitive to home equity lending in general, and especially where junior liens are made by first lien holders. The undersigned do not believe that risks associated with first lien mortgages are significantly affected by second liens, much less that their categorization should be governed by that of the second lien. Finally, while stand-alone junior liens would also be punitively treated in many instances, they would be favored relative to junior lending by a senior lien holder. In contrast, we believe most banks have experienced superior performance for many years on junior liens made to our own mortgage borrowers, relative to junior lien lending to borrowers with a first mortgage from another lender.

The undersigned would point to the Standardized Framework proposed rule jointly published in 2008 by the Agencies (the "Standardized Framework PR") as a preferable approach. The Standardized Framework PR achieved many of the same goals as the more recent proposal without introducing other effects and outcomes that, the undersigned believe, are undesirable and unwarranted for the mortgage credit market.

Specifically, we would support the following points made in the Joint Trades Letter and point the Agencies there for more detail:

The Proposed Categorization Methodology Focuses on Specific Product Features rather than Prudent Underwriting and Risk to Banks.

The Standardized Approach PR focuses on the risk of particular products and judges some products to be inherently riskier than others; however, a prudently underwritten non-traditional product will almost always outperform a poorly underwritten, more ordinary product. The Standardized Approach PR appears to recognize this rationale in its preface, but then shifts its focus to specific risk-weights based on product type or structure.

The Standardized Approach divides mortgages into two categories – Category 1 and Category 2. Category 1 mortgages generally appear to be those mortgages which would meet the "Qualified Mortgage" standards as outlined in the Dodd-Frank Act ("QM"), and it generally appears that all other mortgages would be placed in Category 2 with punitive risk-weightings that double (or more than double for lower LTV loans) those of Category 1. The undersigned certainly do believe that all mortgages meeting QM standards should qualify for the lowest available risk-weightings. However, we do not believe that only QM loans should qualify for such treatment. The QM standards were written by Congress to create rules regarding legal presumptions regarding ability to pay (providing a form of "safe harbor" for lenders). Other loans may well be appropriate for borrowers and are fully permitted by the statute. Critically, the QM standards were not written with an eye toward bank capital standards, nor were they calibrated to determine what risk to lenders may be inherent in a given loan product. We do not believe that delineating the risk of mortgages in this way is appropriate and encourage the Agencies to withdraw this methodology and work with the industry to determine an appropriate approach that is more sensitive to actual risks.

As lending institutions, banks must originate mortgages that are well-underwritten with appropriate risk – this is fundamental to banking and credit provision. Even without the punitive

4 BusinessWire, "Fitch U.S. Mortgage RWA Rules to Discourage High-Risk Lending," September 19, 2012.

capital treatment that would result from the proposed risk-weightings, availability of credit has been diminished, which may be partly attributable to significantly more restrictive standards than heretofore, perhaps due to (i) their own perceptions of risks post-crisis; (ii) concerns about risks of put-backs; or (iii) uncertainty relating to QM standards yet to be proposed. As a result, those borrowers able to obtain mortgages are generally those with exceptionally strong credit histories. Applying punitive capital standards to loans where the risk is mitigated through underwriting and evaluation of the borrower will serve to further restrict mortgage credit in the U.S. and narrow the pool of recipients that can qualify for a mortgage.

The FRB New York Staff Report No. 529, "A New Look at Second Liens,"[5] (the "Report") illustrates a well-known point regarding structuring and underwriting mortgages. Borrowers with poorer credit and poorer capacity to repay coupled with relaxed underwriting standards in structures to compensate for these shortcomings performed very poorly; however, similar loans to borrowers with the means to repay performed very well.[6] The issue is not the structure of the product; rather it is the appropriateness of that product for the borrower and the borrower's ability to repay.

The Standardized Approach PR would cause the following types of mortgage loans to move automatically to Category 2, with double risk-weighting or more:

- The proposal would designate as Category 2 any adjustable rate loan ("ARM") – whether made in the past or the future – which does not have caps that limit rate increases to two percent in the initial year, two percent in any year, and six percent over the lifetime of the loan (i.e., it must be a "2-2-6" ARM). Traditional hybrid ARMs, such as "5-2-5" ARMs, would be classified as Category 2. Also classified as Category 2 would be an ARM with a fixed term of three years, which floats thereafter at market index rates, unless it were underwritten to the maximum interest rate – in other words, as if the rate environment during the subsequent three years will increase by six percent (e.g., a loan with a 4% fixed rate would have to be underwritten as a 10% mortgage). The proposal would severely limit borrowers' ability to choose adjustable rate mortgages and banks' ability to make them. We note that ARMs are generally the safest loans for banks to make from an interest rate risk standpoint. Requiring these caps would introduce additional risk to bank balance sheets; their absence reduces risk to banks, yet the rules ascribe capital as if risk were heightened. We ask that that the Agencies study previous periods of rapidly rising rates to evaluate the relative interest rate and credit risk of banks' mortgage holdings.
- The proposal would designate as Category 2 any floating rate loan with no caps, which would include – primarily – virtually all home equity lines of credit ("HELOCs") in the industry. The undersigned firmly believe that HELOCs, which include undrawn amounts, should be floating rate in nature. It is not clear how a bank would even structure a prudent HELOC with caps, given that future draws could be made at capped rates below market rates in the future.
- The proposal would classify any loan featuring a balloon payment as Category 2, unless it was a rural balloon mortgage. The undersigned agree with the principle that balloons may be appropriate for the right borrower, but do not see how the geographic location of a balloon mortgage affects its risk. Balloon structures have been used for many decades, and the undersigned are not aware of any information that demonstrates they have significantly higher risk. Balloons, like interest-only mortgages and longer-term mortgages, are generally used to

5 Donghoon Lee et al., Federal Reserve Bank of New York, August 2012.
6 Id. at 6.

make payments more manageable for borrowers. Balloon loans require appropriate underwriting, and although LTV reduction is less than in a fully amortizing mortgage, we do not believe they present the risks assumed in the proposed rules.

- The proposal would also designate as Category 2 any loan with an interest-only period or a term of more than thirty (30) years. We agree that these loans must be underwritten soundly and be appropriate for those borrowers who choose them. However, the proposal presumes these loans to be risky, independent of the underwriting or the situation. These loans are more common in states with high home prices, such as California and New York. Additionally, these loans are often made to wealthier borrowers or business owners, where the borrower prefers to invest additional capital in their business or other investments rather than to increase further their home equity. These are legitimate consumer choices that would be priced away with the punitive capital treatment automatically assigned to such loans. Furthermore, many HELOCs are structured with interest-only periods or principal paid at maturity, rather than fully amortizing. We do not believe that this type of structure has been demonstrated to be inherently risky, and in fact HELOCs performed consistently with prime first mortgages during the past several years including the crisis.[7]

For each of these types of loans, a reasonably prudent lender can underwrite the loan to be a sound one, appropriate for the bank and the borrower. Good lenders do this as a matter of course, and the "ability to pay" rules of the Dodd-Frank Act require them to do this. Loans should only attract higher capital charges when they are shown to have been imprudently underwritten, or when a type of loan has been demonstrated to have inherently higher risk – even when it is well-underwritten.

The undersigned readily acknowledge that there are mortgages that involve higher risk. These would include loans that demonstrated consistently poor performance during the crisis – such as negative amortization mortgages (e.g., Option ARMs), teaser rate ARMs (those loans with an initial rate well below the prevailing fully indexed rate), and mortgages where income was not properly or fully documented.[8] We believe, for traditional banks, the main drivers of loss during the crisis (i) were general and geographically differentiated home price appreciation, (ii) followed by depreciation, and (iii) general and geographically differentiated trends in unemployment. These factors, particularly they way they differentially affect geographies, cannot be known in advance and the undersigned do not believe these factors would be appropriate for use in risk-weighting the asset.

The undersigned do believe there are better alternatives that may be pursued to design capital rules that are more risk sensitive. The undersigned fully support the use of LTV, which is a recognized indicator of risk that lenders have used for decades. The undersigned believe that while LTVs and product features significantly affect mortgage performance, underwriting also plays a critical role. As such, within each LTV band, the increase in risk-weights from Category 1 to Category 2 mortgages should not be as severe as currently proposed. Other measures that have proven productive for many years (including during the crisis) are measures of debt-to-income, which is the key measure addressing ability to pay, and measures of borrower credit quality, such as FICO™[9] and other similar scores. See Exhibit A, attached hereto. Underwriting considerations, such as FICO™,

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7 Id.

8 We observe that requirements to document income are posing serious challenges for business owners with variable income in obtaining or refinancing mortgages. This type of situation is prone to be addressed through careful underwriting but not by prescriptive rules.

9 A credit score derived by the Fair Isaac Corporation.

which embed probabilities of default, have a substantial impact on mortgage performance as well. The undersigned believe that the differences in risk-weights between Category 1 and 2 mortgages, therefore, should be more nuanced according to critical underwriting features, such as probabilities of default. The undersigned believe that most lenders, large and small, use these measures as key aspects of underwriting, because they have proven to be effective.

Along these lines, a potential path to consider would be to leverage the rulemaking by the FDIC on high risk consumer loans[10] (the "FDIC Approach") by risk-weighting mortgages on the basis of probabilities of default with an overlay of LTV. Because the FDIC is already working with the industry on developing mapping tables to convert FICO™ scores to PDs, the Agencies could build on this work to create a far more nuanced risk-weighting of assets than reliance on single risk indicators, which inherently produce cliff effects and thus need to be carefully chosen. In order to utilize this methodology in a Standardized Approach, it would be necessary to ensure that it was appropriate for banks of all sizes. The undersigned believe most banks use FICO™ or similar scores, at least to some extent, as part of their underwriting processes; however, the Agencies would be in a better position to judge this.

Our understanding is that the Agencies may be reluctant to use metrics such as FICO™ to help determine mortgage risk-weighting. The undersigned would note, however, that guidance regarding subprime lending programs points to the use of FICO™ as a key factor in determining appropriate risk management controls and capital necessary to support those programs. Furthermore, the FDIC Approach defines high risk consumer loans according to probabilities of default. Thus, there is precedence in the use of meaningful underwriting factors in the determination of loan risk. The undersigned would urge, therefore, the Agencies to consider carefully the use of important underwriting characteristics when developing the final mortgage risk-weight matrix.

Determination of Numerator in LTV Ratio

The 2008 Standardized Framework proposed two methods for determining the numerator in the LTV ratio. The primary method used one LTV ratio for the funded portion of the exposure and a separate LTV ratio for the unfunded portion of the exposure. Where the unfunded portion crosses an LTV risk-weighting threshold, this primary method resulted in two different risk-weights for a single exposure. The result of this primary method is appropriate in that the funded portion is risk-weighted based on the equity at the measurement date of the exposure. A consequence of this method is the apparent complexity of having two different LTVs to calculate and possibly two different risk-weights.

The alternate method proposed in the 2008 Standardized Framework used a single LTV ratio that would determine the risk-weight for the entire exposure based on the maximum potential exposure, which does not accurately represent the equity collateralizing the exposure at the measurement date. Distortion in measured risk resulting from this method is most evident in HELOCs when the unfunded portion of the exposure causes the would-be LTV to cross a risk-weighting threshold. The vast majority of HELOCs performed well during the last credit downturn, and it would be a misrepresentation to use this method—the only one proposed in the Standardized Approach PR—

10 Assessments, Large Bank Pricing, 77 FR 18109 (March 27, 2012). Under the FDIC Approach, a high-risk consumer loan is defined, in relevant part, to be: "all consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default ("PD") within two years ("the two-year PD") was greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan." (18113).

to determine the risk-weight applicable to funded balances.

In the re-proposal of the Standardized Approach PR, the undersigned believe the Agencies should specify that the numerator in the LTV ratio is the exposure, itself, as adjusted for the appropriate credit conversion factor ("CCF"). In essence, the LTV of an open-ended exposure that is deemed unconditionally cancelable for risk-weighting purposes is simply the funded portion. Those mortgages containing unfunded commitments whose CCF is not zero (e.g., negative amortization products) would result in higher exposures amounts at higher LTV ratios and corresponding risk-weights. This method of determining a single risk-weight for a given exposure would be simpler to implement than any of the previously-proposed methods, and this method better reflects the risk of the exposure as gauged by the equity protecting the exposure as of the measurement date.

The Proposed Combining of Exposures Leads to Unwarranted Category and LTV Effects on Senior Liens through "Tainting" by Junior Liens that are Subordinate.

We believe exposures should be risk-weighted on a stand-alone basis because the nature of each exposure, senior and junior, is dominated by its own characteristics and structure, and because of the security position of the senior lien relative to a junior lien.

Junior liens are inherently riskier than senior liens. Of course, there are risk distinctions among junior liens – for example, junior liens with low "attachment points" are less risky than those with higher ones. Junior liens made by the same lender as a senior lien have always been viewed to be generally less risky than those made by a different lender. By contrast, simultaneous "piggy-back" junior liens tend to perform worse than those made after the initial financing. In fact, the FRB's Report on home equity lending concludes that the most important factor with respect to the quality of a home equity loan was whether or not the second lien mortgage was originated and funded simultaneously with the first lien.[11] However, the Standardized Approach did not directly address piggy-backs, instead treating all second lien loans by the same lender as a first as if they were piggy-backs.

The methods used to assign risk in the Standardized Approach PR works at cross purposes to these realities. Therefore, we believe it would be simpler to apply risk-weights to junior liens according to combined LTV similar to the methodology set forth in the Standardized Framework PR.[12] This would also be preferable because of the significant dislocations to normal home equity lending inherent in the proposed rule, whereby junior liens made by the holder of a senior lien would affect both the LTV position of the senior lien and potentially affect the category (as proposed) of the senior lien. This could easily lead to effective risk-weightings for such junior liens of many hundreds of percentage points, whereas the risk-weighting of a junior lien made by another lender would be no more than 200 percent and typically much lower. The undersigned believe it would be difficult to communicate the appropriate pricing to our own lenders in the field, to reflect these disproportionate capital effects. Further, it would be nearly impossible to explain to our customers why another lender was able to offer a loan that we could not make or would need to make at much higher pricing. This approach may lead to a more punitive treatment than justified for some junior lien loans, such as HELOCs, but it would be preferable and more manageable than the proposed approach.[13]

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11 Donghoon Lee et al., Federal Reserve Bank of New York, August 2012 at 22.

12 Industry comments at the time noted concerns about the appropriateness of a one hundred fifty percent (150%) risk-weight attribution for all junior liens with a ninety percent (90%) combined LTV or more.

13 The FRB Report found that HELOCs performed much like prime senior loans through the crisis and subsequently.

The Advanced Approach does not require a combining of exposures with consequences to the measured LTV of the first lien, nor the possibility that the junior lien (e.g., a category 2 junior lien) could taint the category and risk-weighted assets of the first lien. A QIS comparing the two approaches could ensure that the two approaches are at least generally consistent in their attribution of risk.

The undersigned recognize that the Agencies have concerns regarding "piggyback" junior liens. Therefore, we would support combining senior and junior exposures for piggyback junior liens originated and funded simultaneously with a senior lien, for purposes of financing. However, it is the experience of the undersigned that second lien loans funded some time after the origination of the first lien have a very different track record than second liens originated and funded simultaneously with the first lien. The undersigned do not believe that combining exposures is otherwise appropriate – for LTV measurement of the senior or its category – as it does not recognize the inherent structure or security position of the senior lien relative to the junior.

The Risk-Weighting of Mortgages and Home Equity Loans by LTV Should Include Additional Strata.

The use of LTVs for risk-weighting is entirely appropriate given their importance in the underwriting decision and the relative magnitude of the loss given default. However, the undersigned believe that additional strata should be used to reduce the "cliff effects" in risk attribution between the current, overly broad strata. The undersigned would support LTV and combined LTV ("CLTV") strata at every ten (10) percentage point threshold, from fifty percent (50%) to eighty percent (80%), and every five (5) percentage point threshold, from eighty percent (80%) to one hundred percent (100%), for both senior and junior liens. This would reduce cliff effects due to differences in LTVs (such as between seventy percent (70%) and eighty percent (80%)) and ensure that marginal increases in exposure do not have effectively disproportionate risk-weighting effects. This approach would be more similar to the 2008 proposal, which included six (6) LTV tranches rather than the four (4) included in 2012. The addition of tranches may seem to add complexity; however, the exercise of identifying and tracking LTVs – which would be necessary anyway – produces the data needed to maintain compliance. The undersigned believe that the junior lien table should also include more tranches, and there is no reason for it not to match the senior lien table.[14]

Private Mortgage Insurance.

Private mortgage insurance receives no credit in LTV computations, despite the risk mitigation it provides. While we recognize that during the crisis there were instances where PMI providers could not or would not meet their obligations, in virtually all cases PMI did provide some credit loss protection and in many cases full obligations were met. Moreover, changes that have occurred since the crisis should not be ignored. The National Association of Insurance Commissioners has tightened capital requirements for insurers, among other things. It is also worth noting that government sponsored entities ("GSEs") continue to require PMI for mortgages over 80% LTV. When GSEs require originating banks to pay for PMI, it is incongruent for the Standard Approach PR to assign no value to PMI as a mitigating risk factor. Also, by neglecting to include PMI within the LTV computation, the proposed rule would adversely affect customers because banks will need to adjust

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This likely reflects the tendency for such loans to be made to high quality borrowers.

14 It would not be necessary to require institutions to take full advantage of the more granular LTV tranches, if they preferred to measure fewer tranches, as long as risk-weightings were at least what was required.

pricing of loans in order to accommodate the additional capital charge. The result of not giving any credit for PMI is that customers will pay twice for the same risk by (a) paying for PMI and (b) paying a higher rate on the mortgage due to the capital charge.

Restructured or Modified Loans

The Standardized Approach PR appropriately exempts loan modifications under the Home Affordable Modification Program ("HAMP") from reclassification at the time of modification. However, the Standardized Approach PR does not provide similar protection for voluntary loan modifications, many of which were structured to be more sustainable than the HAMP program. Given that modifications may involve terms that would otherwise reclassify the loan, the Standardized Approach PR would create a significant disincentive to modify loans and punishes banks for doing so. This does not serve existing policy goals of the Agencies or government authorities. The sound public policy interest in encouraging banks to work with borrowers is important to preserve.

Community Reinvestment Act ("CRA")

It is a policy contradiction to effectively require banks to make certain loans under the CRA and then punish them through the assignment of very high risk-weightings and capital (e.g., loans that make payments for borrowers more affordable through longer terms). Although the undersigned recognize CRA loans may carry additional risk, the Agencies require banks to undertake this risk as a way to encourage investment in the communities in which the banks operate. The elimination of the single risk-factor approach to categories would go a long way toward correcting this outcome, which may have been unintended. In a final rule, the undersigned request careful consideration of the effects on CRA lending.

Credit Enhancing Representations and Warranties

The Standardized Approach PR requires capital be held against loans sold with certain representations to capture the "implied credit enhancement" that is created from underwriting a loan to a purchaser's standards. The language is not limited to loans sold to GSEs, but applies to all loans sold, whether it is to a GSE or a private purchase. A warranty for early payment defaults ("EPD"), which creates an obligation for the loan seller to repurchase the loan if a borrower defaults in the first one hundred and twenty (120) days of the loan, would appear to be included in the definition of "implied credit enhancement." The presence of provisions for EPD in contracts is to provide clarity and simplicity to these arrangements. It is precisely because EPDs are so unusual that contracting parties agree it can be presumed that such a loan must have had problems at its origination; the presence of these agreements is *not* because the parties believe there is a high risk of actual losses during this period.[15] In current capital rules, there is an exception that prevents these representations and warranties from being treated in this way, and we support the continuation of this exception as being consistent with actual risk.

15 Under the proposed rule, the risk-weighted assets associated with these credit enhancing representations would appear to actually remain in place for as long as the purchaser holds the loan regardless of whether the EPD repurchase period has passed. In practice, loan purchasers may not review loan underwriting and documentation until a loan defaults. Even though this practice is changing, effective with the new Uniform Loan Delivery Dataset ("ULDD") and a more "upfront" due diligence process, the scope of the Standardized Approach PR language would appear to cover all new originations and all previously sold loans that are currently held by the purchaser. The undersigned believe this would be entirely unwarranted as a seller would never be able to free itself from carrying sold mortgages as assets.

It is particularly troubling that the proposed treatment of credit enhancing representations and warranties would overstate the capital requirement for mortgages because capital would be held against the mortgages by the buyer and the seller. The institution purchasing the mortgages must account for the mortgages in its risk-weighted assets and the seller must also account for the EPD representation in its risk-weighted assets at a risk-weight of 100%. This overstatement of the risk of the same asset is both unduly conservative and exceptionally burdensome.

The undersigned would also note that this requirement would only apply to federally regulated financial institutions and is not applied consistently and equally to all non-banking entities that sell mortgages. Because unregulated lenders would not be subject to the Standardized Approach PR, the undersigned envision a great deal of this lending would be pushed to these organizations because these lenders would have a lower cost structure. Although these rules would likely curtail the pipeline of mortgages to the GSE's from regulated financial institutions, it would likely do so at a tremendous cost to borrowers.

For these reasons, the undersigned strongly urge further study of the actual risks arising from credit enhancing representations and warranties, as we believe that the proposed rules would grossly overestimate the actual risk of loss faced by the institutions providing them. The undersigned believe that a calibration study would demonstrate that a capital charge or CCF for potential losses during the warranty period, even if limited to one hundred twenty (120) days following the sale of the mortgages, would represent *de minimis* risk or a small fraction of the 100% proposed.

Proposed Rules for High Volatility Commercial Real Estate Exposures

In this section, the undersigned seek to address mismatches of risk with respect to (a) the scope of the high volatility commercial real estate ("HVCRE") definition, (b) contributed capital and (c) the development risk versus cash-flow risk. After identifying each of these issues, the undersigned propose alterations to the Standardized Approach PR that would better address these circumstances and more accurately reflect risk.

Scope of HVCRE Definition

While the recent crisis indicated the need to hold additional capital for certain commercial real estate exposures, the undersigned believe that the HVCRE definition encompasses a broad array of construction loans that do not possess a uniform risk structure. By imposing a comprehensive 150% risk-weighting to acquisition, development, and construction ("ADC") loans, the Standardized Approach PR does not recognize the variations in structuring alternatives for certain loans that would materially alter the risk profile. This becomes evident when considering the types of facilities that would fall under the broad definition of ADC loans. For example, the current rule would capture cosmetic renovations on apartment building lobbies, a change in signage on small shopping centers, customary capital improvements like roof replacement on a warehouse building, and code upgrades on elevators for multistory office buildings. The risk attributes of these types of projects described above materially vary from those of a new construction project on any of the property types (residential, retail, office or industrial).

The undersigned support the Agencies' view to add additional safeguards to corporate project finance. However, as currently defined in the Standardized Approach PR, the scope of the HVCRE rule would unduly hamper the ability of banks to extend construction financing to small business

owners and owner occupied developments. In order to focus safeguards where they are most needed, the undersigned recommend amending the "Commercial Real Estate Project" definition to specifically exclude these two groups. Small business owners can generally be identified by excluding exposures of less than $1 million from this risk-weight category. Owner occupied loans can be characterized as loans that are for the purpose of enhancing an ongoing business, which business will occupy the majority of the facility when the ADC loan improvements are completed ("Owner Occupied"), and the majority of whose source of repayment is from the Owner Occupied business. Owner Occupied loans behave much more like commercial and industrial loans ("C&I Loans"). Loans to small business owners present less exposure than ADC loans and Owner Occupied loans present far less risk. In addition, including small business owners and Owner Occupied developments into the HVCRE rule would likely decrease the availability of funds for small business lending by increasing the costs of this kind of lending. It is the belief of the undersigned that small business loans and Owner Occupied loans should be exempt in order to not further impede the ability of this important segment of the economy to grow.

Contributed Capital

In addition to refining the scope of the HVCRE rule, the undersigned propose that the requirements of the HVCRE category be further refined to include a graduated risk-weight scale based on contributed capital. By implementing a graduated scale, banks will have greater ability to price loans differently based on varying amounts of equity contributed by borrowers to the deal. By providing various pricing alternatives, borrowers will be incented to contribute as much equity as possible, even if 15% is not possible. Below, part I addresses issues related to equity contribution and the impact on risk-weighting and part II addresses risk-weighting based on capital contributed.

I. Cost vs. "As Completed" Value – Equity contribution should be calculated based upon the cost of construction rather than the "as completed" appraised value because this would more accurately reflect the actual exposure of the bank to potential losses. The undersigned appreciate that one of the issues from the crisis was the frequent occurrence of developers defaulting part of the way through a project such that the value of the project could not be salvaged without substantial investment by the lender. However, the undersigned note that, in such situations, the lender has the flexibility to complete the project in a way that might be different than originally contemplated by the borrower. Therefore, the "as-completed" appraised value would imply a larger exposure because it reflects some profit or intrinsic value of the completed property above and beyond the cost to complete the property. These issues support the point made earlier that a QIS is advisable to adequately assess the impact of the NPRs and the appropriate calibration of risk-weightings to risk.

II. In addition, the proposed HVCRE risk-weight structure does not take into consideration loans that have more than 15% equity in the transaction. Stated another way, if this portion of the Standardized Approach PR is unchanged, there is no incentive for banks from a regulatory capital perspective to ask for more than 15% equity even though, in absolute terms, the more equity contributed to the project, the less risk a bank takes. For example, if an ADC loan has 50% equity at the initiation of the project and they maintain that equity throughout the entire transaction, there is no change in risk-weight compared to the transaction in which a borrower has only contributed 15% equity upfront. Assuming one of the goals of the Standardized Approach PR is to incent less risky behavior, the undersigned would suggest that banks be given a benefit in regulatory capital with respect to transactions in which an amount of equity greater than 15% has been contributed by the borrower. This could be accomplished by creating a more graduated scale for loans based on the level

of contributed capital.

Development Risk versus Cash Flow Risk

Certain ADC borrowers initiate lease agreements while undergoing required renovations or tailored construction prior to concluding its "life of the project" and transferring from development financing to permanent financing. Once cash flows reaches an appropriate level to match debt payments (1.00x Debt Service Coverage "DSC"), the risk profile of the exposure has been significantly altered and the risk-weighting should be adjusted accordingly.

The banks propose the following requirements for loans to be considered income producing and therefore, not part of the HVCRE classification:

- Properties newly constructed or previously in service that generate cash flow (net of all allowances and concessions), which cash flow is equal to or greater than a 1.00x DSC;
- Certificate of occupancy must be issued; and
- Interest payments cannot be made from any type of construction interest reserve.

These cash flowing properties should receive a risk-weighting commensurate with other commercial real estate properties.

Proposed Rules with respect to Accumulated Other Comprehensive Income

Potential Consequences of Reflecting Unrealized Gains and Losses on Available for Sale Securities

Under the Proposed Capital Rules, "…unrealized gains and losses on all available-for-sale ("AFS") securities would flow through to common equity tier 1 capital." The current risk-based capital rules, which have been in place since the advent of FAS No. 115 in 1993, generally exclude unrealized gains and losses on securities designated as AFS securities. The current capital rules implicitly recognize that the accounting treatment of the investment portfolio is substantially different than the accounting treatment of the remaining bank balance sheet, namely debt and deposits; an asymmetric view which could be misleading when considering the capital position of a banking organization. By excluding unrealized gains and losses associated with the AFS investment portfolio, the current rule allows for the appropriate management of bank interest rate and liquidity risks without injecting capital volatility, given the mismatch between accounting treatments for AFS securities and the debt and deposits that fund them.

Bank investment portfolios serve as a particularly critical tool for asset-liability management. To the extent bank deposits are non-rate sensitive (e.g. DDA, NOW balances), the appropriate hedge is a fixed rate asset, thereby stabilizing the contribution from the deposit and reducing income volatility. Ideally, the deposit would be matched off with a loan of similar tenor but that's not always possible through organic loan production, leaving investments as a more realistic hedging option.

The removal of the accumulated other comprehensive income ("AOCI") filter would, therefore, result in a one-sided capital impact – the change in value of the hedged item (the deposit) would not affect capital but the change in value of the hedge (the fixed rate AFS investment) would. A hedged bank would experience capital volatility that could be material in a changing rate environment. This proposal, therefore, would lead to a substantial change in bank risk management, ultimately impacting the number of products that banks are able to offer customers because they cannot offset the interest rate risk.

Investment portfolios are also important sources of liquidity for future loan growth, potential contingent liquidity requirements, and collateral for municipal deposits. Regional and community banks fulfill an important role in the U.S. economy and seek to make more mortgage loans to consumers. However, continued sluggish recovery has muted loan demand and stock market volatility has driven an increase in deposits. In the wake of dramatically reduced loan-to-deposit ratios as well as the substantially heightened liquidity requirements under the soon-to-be-proposed liquidity coverage ratio and section 165 of the Dodd-Frank Act rules, banks have had no choice but to increase holdings of fixed income securities. The elimination of the AOCI filter, however, will both exacerbate the cost of complying with new liquidity standards and reduce banks' ability to rely on securities portfolios as safe and reliable sources of income.

Should the rule be adopted as proposed, banks would be forced to reduce the size and duration of their portfolios, regardless of whether they currently provide a good economic match to their liabilities, because the volatility in capital ratios would be unacceptable. For example, if a bank is holding 15% of assets in its investment portfolio, and the duration of that portfolio is approximately two years, a 300 basis point change in market interest rates would result in a change in asset value of nearly 1%, which corresponds to approximately a 10% change in capital. This change in capital may be temporary as rates increase or decrease, thus causing increased volatility within regulatory capital levels.

Furthermore, as banks will be less willing to add duration to balance sheets, the current widespread use of Mortgage Backed Securities (MBS) as a source of balance sheet duration offsetting natural liability (deposit) duration will be significantly curtailed, with consequences for overall market demand for mortgage and mortgage products. As recognized by the Agencies, including unrealized gains and losses related to certain debt securities whose valuations primarily change as a result of fluctuations in a benchmark interest rate could introduce substantial volatility in a banking organization's regulatory capital ratios.

If the AOCI filter is not retained, we urge a carve-out for certain high-quality liquid assets as defined by the Board in its Section 165 proposal. As discussed above, these securities, composed largely of U.S. Treasuries, government agency and GSE securities, have very little credit exposure. Such a carve-out would allow banks to maintain a substantial liquidity buffer and prudently manage interest rate risk without taking capital charges related to movements in underlying benchmark rates and wholly unrelated to changes in credit.

The undersigned also believe loss of principal associated with credit risk is already captured in the income statement as a result of quarterly Other Than Temporary Impairment ("OTTI") evaluation required by GAAP. Expected losses considering probability of default and severity of default due to credit deterioration for securities that are in an unrealized loss position must be realized in the income statement. There have been large changes in the fair value of non-agency securities, ranging from large losses at the height of the crisis to more recent gains. The undersigned believe that OTTI reflects the impact of losses that are likely to be permanent rather than temporary. The undersigned contend that it is equally bad policy to hold capital against losses that are temporary as it is to be inadequately capitalized, but have such inadequate capital masked by temporary gains. Consequently, new regulation is unnecessary to capture this risk, particularly with respect to securities with no or limited credit risk, because the information is already available to the Agencies and investors.

Capital Conservation Buffer

Eligible Retained Income

The undersigned also have concerns with respect to how the capital conservation buffer functions in practice. The first concern stems from the definition of "eligible retained income." Eligible retained income is defined as a banking organization's net income for the four calendar quarters preceding the current quarter, as reported in the banking organization's quarterly regulatory reports, net of any capital distributions, certain discretionary bonus payments and associated tax effects not already reflected in net income. The definition, however, fails to account for items included in net income, such as goodwill impairment and other non-cash and non-capital charges, which are captured in the definition of "net income" for regulatory reporting purposes. This could result in a bank being forced to incur a severe reputational and market impact from a scenario that has little economic impact on the firm; e.g., a decrease in regulatory capital below the capital conservation buffer coupled with a large intangibles impairment that results in negative earnings. In light of the potential materiality of non-cash and non-capital charges, such as goodwill impairment, and the effect they may have on the ability to make payouts within the capital conservation buffer, including preferred dividend payments, the undersigned would argue that there should be a greater correlation between the income that contributes to capital and the income that determines a bank's ability to make capital distributions when inside the buffer. The purpose of limiting capital distributions when ratios fall within the buffer is to ensure that banking organizations are conserving a portion of their income. Using an income calculation that includes potentially material items that do not impact capital would fail to recognize the full level of capital retention. The undersigned would recommend that "eligible retained income" be redefined to remove non-cash charges that do not impact regulatory capital.

No Distinction Among Priority in Capital Instruments

While it is true that both preferred shares and common shares are capital instruments and the undersigned do not dispute that banking organizations should be able to cancel the dividend payment on either at any time, the Capital PR strains commercial understanding of priority. It may be appropriate for the bank to reduce its common dividend to preserve capital in the event their future estimates are off, but it is too severe to force them to eliminate their preferred dividend. By including both common and preferred dividends as capital distributions and subject to the same constraints, the Agencies are disrupting the seniority of the capital structure; i.e., preferred shareholders should have a different "attachment point" than common shareholders in terms of when their dividends are suspended.

Limitations on Capital Distributions Should Reflect Situational Circumstances

Another approach to limits on capital distributions would be to follow requirements that are more closely tied to retention of retained earnings, such as those set forth by Regulation H that limit dividends based on retained net income. For example, this could be achieved by removing the restriction on making capital distributions when "eligible retained income" is negative and replace with the following criteria: from a proscriptive standpoint, a bank should be able to pay dividends in the current quarter if:

- Trailing four (4) quarters of net income is positive or forward four (4) quarters (including current quarter) is forecast as positive;
- Most recent reported quarter net income is positive; or

- Current quarter expected to be positive.

This methodology more closely relates distributions of capital through common and preferred share dividends and certain bonus payments to actual capital being produced by the enterprise.

Minority Interest Rules and Their Application to REIT Preferred Securities

Section 21 of the NPR places significant restrictions on the amount of additional tier 1 and tier 2 capital issued by a consolidated subsidiary of a banking organization and held by third parties that may be included in the capital of the parent bank holding company. The Agencies have specifically requested comment on whether these minority interest limitations should apply to real estate investment trust ("REIT") preferred securities issued by a consolidated subsidiary. For the reasons discussed below, we believe that the minority interest rules in Section 21 of the NPR should not be applied to REIT preferred securities issued by a consolidated subsidiary. This exclusion is important to ensuring that U.S. banking organizations can meet the new heightened capital standards associated with Basel III in a cost-effective and prudent manner.

As the agencies acknowledge in the Basel III NPR, preferred shares issued by a REIT subsidiary are generally included in a banking organization's tier 1 capital as minority interest only if the preferred securities meet rigorous conditions established by the banking agencies. These conditions are designed to ensure that qualifying REIT preferred has significant loss absorption capacity. These conditions include a provision that grants the banking organization's primary federal supervisor the right to cause the conversion of the REIT preferred into noncumulative perpetual preferred stock of the banking organization if (i) the banking organization becomes "undercapitalized" under the "prompt corrective action" regulations of its primary federal regulator; (ii) the banking organization is placed into conservatorship or receivership; or (iii) the primary federal regulator of the banking organization, in its sole discretion, anticipates that the banking organization will become "undercapitalized" in the near term. In light of this exchange feature, which provides the agencies the ability to ensure that REIT preferred is available to absorb losses at the consolidated banking organization level, we believe that it is not appropriate to apply the minority interest limitations to qualifying REIT preferred securities. Moreover, subjecting REIT preferred to the punitive minority interest provisions of the proposed rules would, as a practical matter, eliminate the only form of tax-advantaged capital instrument for US banking organizations.[16]

REITs must distribute ninety percent (90%) of their earnings in order to maintain the beneficial tax status that makes them attractive investments. The requirement that a REIT preferred issuer have the ability to either cancel dividends or declare a consent dividend (i.e., a dividend not actually paid to holders, but nevertheless reported by holders as taxable income despite retention by the issuer) in order to include a portion of such REIT preferred in Tier 1 capital is likely to significantly reduce the viability of REIT preferred as an attractive investment to potential purchasers. The requirement to be able to pay a consent dividend is especially onerous for securities that contain a dividend stopper. The undersigned believe that the effectiveness of a consent dividend is negated in these cases, as the banking organization would be unable to pay a consent dividend to common shareholders if the preferred dividend was eliminated. The undersigned request that the Agencies clarify their intent in

16 Trust preferred securities are tax-advantaged forms of capital; however, pursuant to Section 171 of the Dodd-Frank Act, trust preferred securities will eventually no longer be eligible as a form of additional tier 1 capital.

requiring that a REIT preferred issuer have the ability to declare a consent dividend, especially in circumstances where a dividend stopper exists.

Additional Tier 1 Instruments

Criterion number 7 for inclusion of capital instruments as additional Tier 1 capital is that:

> "[t]he banking organization has full discretion at all times to cancel dividends or other capital distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or a***n imposition of other restrictions on the banking organization except in relation to any capital distributions to holders of common stock***." [emphasis added]

Some preferred capital instruments have clauses such as follows:

> "So long as any shares of the Series B Preferred Stock are outstanding [and no dividend is paid on the Series B Preferred Stock], no dividends shall be declared, paid, or set aside for payment or other distribution upon any Series B Junior Securities …".

Such clauses generally also restrict the ability of the bank or the holding company to make capital distributions to common shareholders. However, the undersigned would like the Agencies to clarify whether or not the restriction on dividend payments on other preferred securities that are pari passu with the capital instruments, or other capital instruments that are not common shares but may be junior to an instrument that otherwise meets all the criteria for an additional tier 1 instrument, violates the criterion that there be no "imposition of other restrictions on the banking organizations." We note for the Agencies that the Basel Committee on Banking Supervision has published a "frequently asked question" to a similar provision and addresses the issue by noting the following:

> "…dividend stopper arrangements that stop dividend payments on other Additional Tier 1 instruments are not prohibited. However, stoppers must not impede the full discretion that bank must have at all times to cancel distributions/payments on the Additional Tier 1 instrument, nor must they act in a way that could hinder the recapitalization [sic] of the bank (see criteria 13)…".[17]

Investments in Asset-Backed Securities ("ABS") and Mortgage-Backed Securities ("MBS")

The Standardized Approach PR outlines the due diligence a bank must perform when making investments in ABS and MBS. If a bank fails to demonstrate that it has fulfilled these requirements, it must assign a 1,250% risk-weighting for these exposures. We agree that in order to understand the risk of its potential investments, a bank must perform rigorous due diligence. Specifically, we agree that both the structural features of a securitization and performance of the underlying collateral are indicative of the risk of the investment. However, we do not believe that the market data requirements (e.g., requiring banks to consider bid/ask spreads and price volatility) add substantially to this risk analysis. More importantly, in less liquid markets with very little new issuance (such as presently exists for non-agency MBS), this data is nearly impossible to obtain. That does not mean, however, that an asset from an illiquid market is an inappropriate bank investment. If these requirements were

17 Basel Committee on Banking Supervision, "Basel III definition of capital – frequently asked questions," October 2011.

included in the final rule, banks would be incented not to invest in ABS or MBS because of difficulties in obtaining data and the consequent capital charges, not because of their underlying risk. This would likely roll back the improvements in liquidity we have seen in many of these markets, making it more difficult for securitization to support a rebound in consumer lending.

Rather than requiring banks to source largely unavailable market data, we would point to CCAR and other types of stress testing that already provide a holistic risk assessment of a bank's portfolio and overall balance sheet. A number of banks are subject to the CCAR stress testing, many more will be subject to the stress testing under Section 165 of the Dodd-Frank Act and other financial institutions stress test these portfolios as part of prudential banking practice. The undersigned also note the guidance issued by the OCC on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment[18] does not differ tremendously from the approach we are recommending here; i.e., the focus is on the structural features and collateral performance of an asset-backed security rather than on market data. Therefore, to the extent some work is already being done in this area to better identify the risk, the undersigned believe that work should be leveraged to craft a better solution.

Many securitization exposures of banks arise through revolving credit transactions pursuant to which an asset-backed commercial paper ("ABCP") conduit or a bank agrees to fund a loan to a special purpose entity that is secured by the pledge of securitized financial assets from a special purpose entity ("SPE") that purchases the assets from one or more originating entities. These transactions take two basic forms: (1) "permanent" financing of short-term financial assets such as trade receivables, where the amount funded by the ABCP conduit or the bank fluctuates based on seasonal adjustments in the size of the eligible asset pool and financing needs, and (2) "warehousing" transactions, where the ABCP conduit or bank funds securitized financial assets pending their permanent financing in the term asset-backed securities market. The amount of funding available from the ABCP conduit or bank in these transactions is constrained at any given time by the size of the asset pool that is owned by the relevant special purpose entity and available to be financed. The unfunded commitment of the bank or ABCP conduit (which in turn is supported by an identical unfunded commitment by the bank to the ABCP conduit) in these transactions therefore often greatly exceeds the available asset base.

Section __.42(c)(2) of the Standardized Approach PR recognizes this issue by permitting the off-balance sheet exposure amounts of banks represented by unfunded commitments to securitization SPEs to be adjusted downward to the amount of the available asset pool (calculated without regard to the current credit quality of those assets). This adjustment is permitted, however, only to the extent that the exposure of the bank is an exposure to an ABCP program.

In so doing, the Standardized Approach PR fails to take into account that many off-balance sheet securitization exposures of banks to revolving securitization transactions are funding commitments made directly by banks to SPEs sponsored by their customers and are not made through an ABCP program. While ABCP remains an important funding source for assets securitized by bank customers in revolving securitization transactions, direct bank funding has become an equally important source of funding in these markets. This has become particularly true since the onset of the financial crisis, given disruptions in the short-term capital markets, ratings downgrades of banks that

18 77 FR 35259 (June 13, 2012).

provide credit and liquidity support to ABCP conduits, and the availability of non-ABCP funding sources to banks that fund customer securitizations.

The downward adjustment of the notional amount of a bank's off-balance sheet securitization exposure to the amount of the available asset pool should be permitted for revolving securitization transactions generally regardless of funding source. The credit quality and risk of a bank's unfunded exposure to these transactions is the same regardless of whether the exposure to the customer SPE is made directly through a credit commitment by the bank to the SPE or indirectly through a funding commitment that the bank makes to an ABCP conduit. Therefore Section __.42(c)(2) of the Standardized Approach PR should be revised to provide that the notional amount of *any* off-balance sheet bank exposure to a revolving securitization transaction may be reduced to the maximum amount the bank is required to fund given the current assets underlying the securitization transaction.

Implementation Timeframe of NPRs

The undersigned note that the NPRs represent an enormous change for the industry and require that the industry rapidly adopt, and in some instances create, new systems and train personnel to capture data that may not have been captured in any easily searchable format. The undersigned also hope the Agencies agree to the merits of conducting a QIS and calibration evaluation prior to adoption of final rules. Therefore, the implementation dates of the NPRs should be more flexible and based upon the date the final rule is published in the federal register. Consequently, the undersigned recommend that the effective date (a) with respect to the Capital PR be made effective no earlier than two (2) quarters after publication of the final rule and (b) with respect to the Standardized Approach PR be made effective no earlier than two (2) years after the effectiveness of the Capital PR. Alternatively, it may also make sense for all rules to come into effect at the same time; in which case, the undersigned would advocate that both NPRs should be made effective two (2) years and two (2) quarters after the publication of the final rule.

Although many institutions will begin planning for changes required by the NPRs, due to the possibility of changes in significant details from the NPRs to a final rule, it is difficult to actually create or adopt any systems until the final rule is published because making changes to such technology after-the-fact is materially more expensive than waiting to have all the details. Moreover, training personnel on both the use of new technology and the changes in underwriting motivated by the NPRs cannot necessarily begin until after changes in technology and systems have been implemented and strategy in response to the final rule has been determined. The undersigned support the time lag proposed by the Agencies with respect to implementation of the Standardized Approach PR versus the Capital PR in recognition of the significant differences in data requirements between the two rules; however, the undersigned recommend that the starting point for any effective date must be based upon some time after the adoption of the final rule. In addition, adopting flexibility into the proposed implementation of the rule would permit the Agencies time to conduct a thorough QIS without being beholden to arbitrary timeframes. The undersigned also note that nothing in the Basel III treaty requires that the NPRs be fully adopted by the dates set forth in the NPRs. Consequently, we recommend that the Capital PR be effective no earlier than two (2) quarters after adoption of the final rule by the Agencies and the Standardized Approach PR no earlier than two (2) years after implementing the Capital PR.

If you have any questions regarding the content of this letter or would like more information on the proposals herein, please do not hesitate to any of the contact individuals listed at Attachment 1 appended hereto.

Regards,

Capital One Financial Corporation	Comerica Bank
Fifth Third Bancorp	Huntington Bancshares Incorporated
KeyCorp	Regions Financial Corp.
SunTrust Banks, Inc.	

Attachment 1

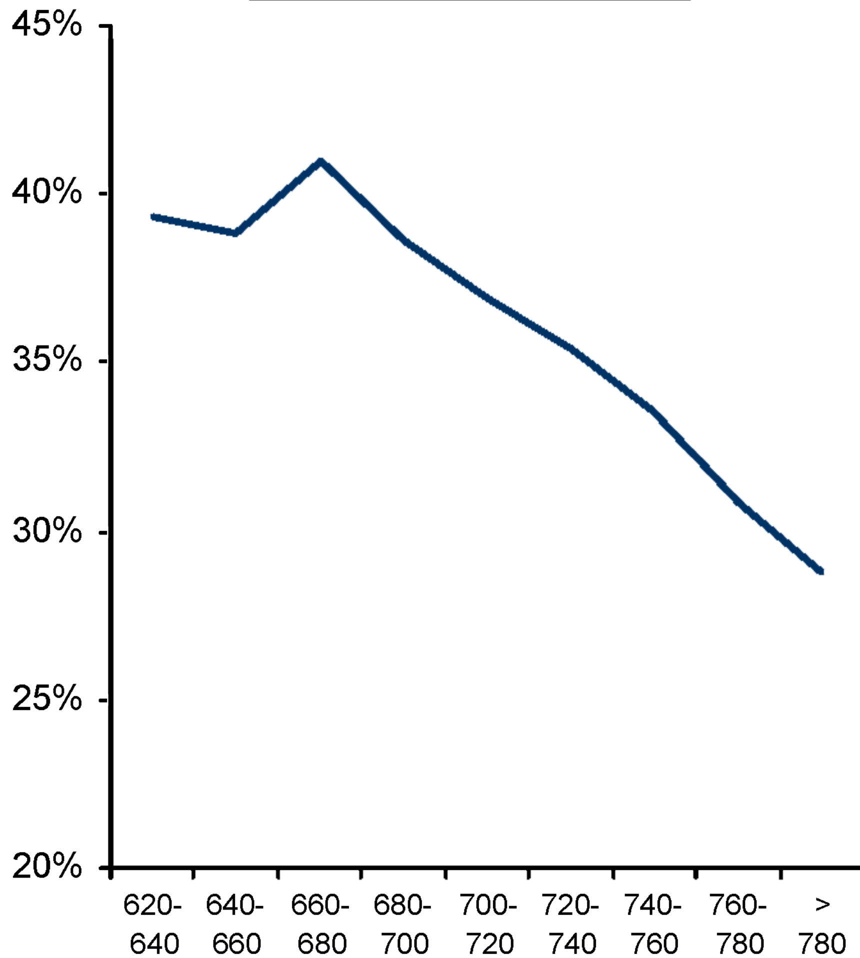
<table>
<tr><td>DJ Culkar
Comerica Bank
Senior Vice President, Assistant General Counsel and Assistant Secretary
MC-6506
1717 Main Street
Dallas, TX 75201
214-462-4401
djculkar@comerica.com</td><td>McHenry Kane
SunTrust Banks, Inc.
303 Peachtree Street, N.E.
Suite 3600
Atlanta, Ga. 30308
404-588-8627
mchenry.kane@suntrust.com</td></tr>
<tr><td>Andres L. Navarrete
Capital One
Senior Vice President
Chief Counsel – Bank, Regulatory, Digital and Customer Experience
andy.navarrete@capitalone.com</td><td>Jeff Richardson
Fifth Third Bank
38 Fountain Square Plaza
MD 1090QC
Cincinnati, Oh. 45236
513-534-0983
jeff.richardson@53.com</td></tr>
<tr><td>Mike Smith
Corporate Treasurer
The Huntington National Bank
41 South High Street
HC9-045
Columbus, OH 43287
Phone: 614.480.4584
Michael.C.Smith@huntington.com</td><td>Deron Smithy
Treasurer
Regions Financial Corp.
1900 5th Avenue North
17th Floor
Birmingham, AL 35203
(205) 326-7832
deron.smithy@regions.com</td></tr>
<tr><td>Joseph M. Vayda
Treasurer
KeyCorp
127 Public Square
OH-01-27-0800
Cleveland, Ohio 44114
(216) 689 3625
Joseph_Vayda@Keybank.com</td><td></td></tr>
</table>

Exhibit A

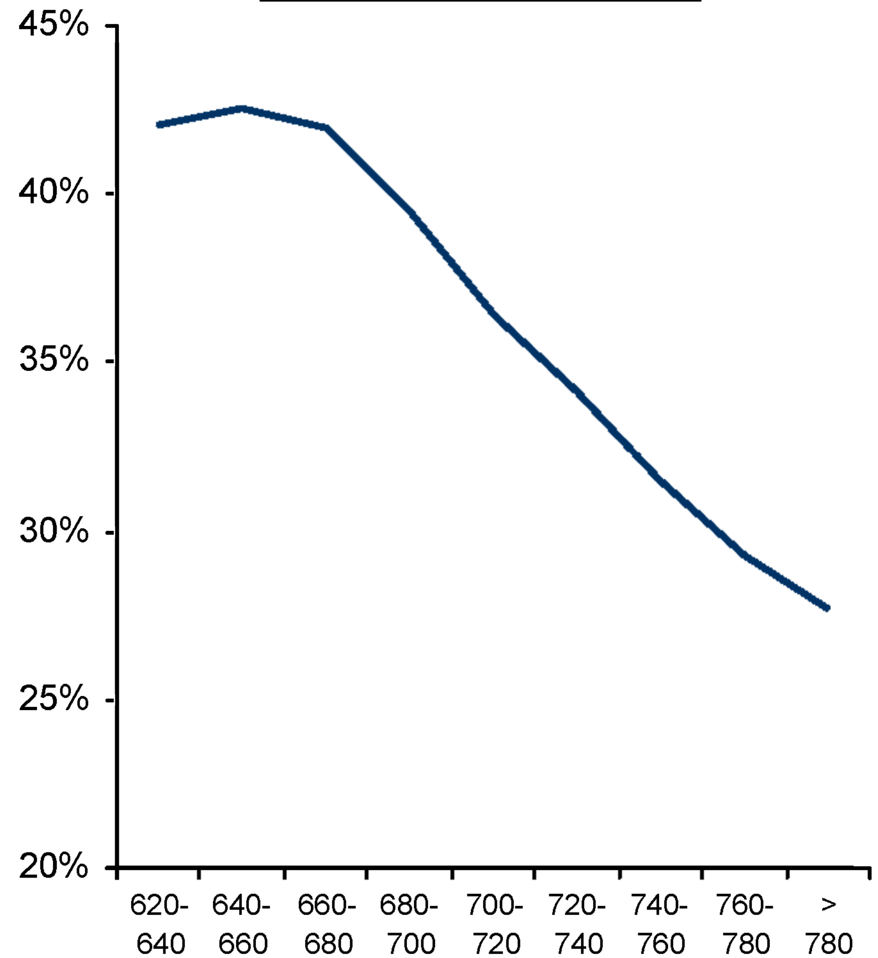
(*attached*)

There is significant correlation between FICO scores and mortgage performance

80 – 90% Origination LTV Bucket



70 – 80% Origination LTV Bucket



Source: Loan Performance (LP) / Date: 10/12/2012

Confidential

Note: Population is industry originated FRM and ARM mortgages current as of May '08 ($678B). Default performance tracked for 24 months.

The data in the attached slide is industry data pulled from the Loan Performance database that shows the relationship between defaults and FICO™. Loan Performance is the industry's largest and most comprehensive database and includes loan-level data on more than $2.2 trillion in MBS and ABS Securities.

The data in the chart includes all the current first lien Fixed-Rate and ARM (Hybrid, IO, and Option) loans outstanding as of May 2008 ($678B) and tracks the default performance of those outstandings over a 24-month period. The resulting default data is then divided into two origination loan-to-value ("OLTV") buckets.

Our key conclusion from the data is that FICO™ is a key component of predicting defaults and somewhat surprisingly, seems to be a better indicator of future default performance than OLTV.