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From: <denise.harris@frb.gov>  
Date: Thu, 26 Jul 2012 15:45:51 -0400  
Subject: Freedom of Information Act Request No. F-2012-00458

Attached is a copy of the response to your e-mail message dated and received by the Board's Freedom of Information office on July 22, 2012 for the following:

the Federal Reserve Board response to the November 9, 2011 letter from Chairman Tim Johnson of the Senate Committee on Bank, Housing and Urban Affairs that was sent to Chairman Bernanke.

(See attached file: Response Letter to Honorable Tim Johnson.pdf)

Thank you,  
Denise Harris  
Freedom of Information Office  
Federal Reserve Board



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

BEN S. BERNANKE  
CHAIRMAN

February 9, 2012

The Honorable Tim Johnson  
Chairman  
Committee on Banking, Housing,  
and Urban Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your letter of November 9, 2011, regarding the importance of conducting an evaluation of the costs and benefits of rulemakings conducted by the Federal banking regulators under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The attached responses provide detail about our efforts to assess the benefits and costs of rules.

As your letter points out, Congress enacted the Dodd-Frank Act to address a number of deficiencies that contributed to the worst financial crisis in many years for the U.S. and to enhance protections for consumers, investors and taxpayers. It is critical that the agencies, including the Federal Reserve, implement this Act in a thoughtful manner that gives full effect to the Congressional intent behind the statute and does so in a manner that responsibly balances the costs and benefits of our implementation efforts.

In this spirit, let me assure you that the Federal Reserve takes quite seriously the importance of evaluating the burdens imposed by our efforts to issue rules implementing the Dodd-Frank Act and adopting an approach that balances costs and burdens within the requirements of each statutory mandate. We do this in a variety of ways, and at several different stages in the regulatory process.

For example, before the Federal Reserve develops a regulatory proposal, we often collect information through surveys and meetings directly from the parties that we expect will be affected by the rulemaking. This helps us to become informed about the benefits and costs of the proposed rule and craft a proposal that is both effective and minimizes regulatory burden. During the rulemaking process, we also specifically seek comment from the public on the benefits and costs of our proposed approach as well as on a variety of alternative approaches to the proposal. In adopting the final rule, we aim for a regulatory alternative that faithfully reflects the statutory provisions and the intent of Congress while minimizing regulatory burden. We also provide an analysis of the costs

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to small organizations of our rulemaking consistent with the Regulatory Flexibility Act and compute the anticipated costs of paperwork consistent with the Paperwork Reduction Act.

Measuring the impact of agency regulations on affected persons and the overall economy is very challenging, especially in the context of the numerous related rules required by the Dodd-Frank Act to be issued during the same time period by a number of agencies. The Federal Reserve believes strongly that public comment can enlighten our regulatory actions and inform our implementation of our statutory responsibilities. Consequently, the Federal Reserve has long followed the practice of providing the public a minimum of 60 days to comment on all significant rulemaking proposals, with longer periods permitted for especially complex or significant proposals, such as our recent proposal on enhanced prudential standards. We also have extended the comment period in cases where we believe additional time helps to promote the public's interest, such as in the case of the Volcker Rule and risk retention proposals. Similarly, we also favor seeking public comment on significant statements of regulatory guidance, and typically invite the public to comment on major statements of supervisory guidance, such as our guidance regarding incentive compensation. In addition, we make available to the public our examination manuals, supervisory letters, transaction approvals (and denials), and other matters of interest to the public related to implementation of our statutory responsibilities.

We also consult regularly with our fellow bank regulatory agencies on matters that might affect their institutions as well as on matters of common interest where a single regulatory approach across banking organizations of different charters would reduce compliance burden and risk. We accomplish this in many ways. The Federal Reserve participates in the Federal Financial Institutions Examination Council and in the Financial Stability Oversight Council, both of which facilitate interagency consultation and cooperation. Moreover, members of the Board as well as staff at senior levels have long established working associations with their peers at other agencies and have regular meetings to discuss policies of common interest and applicability. These many avenues of consultation at multiple levels increase the coordination and consistency of regulation across a banking industry that has many regulators and charters. We have expanded these channels to include regular consultation with the SEC, CFTC, CFPB and other agencies as changes in the law have caused our spheres of regulatory responsibilities increasingly to overlap.

The Federal Reserve also has for many years had a policy of conducting a zero-based review of each of its regulations on a periodic basis--typically every five years. The purpose of this review is to update each rule, reduce unnecessary burden, and streamline regulatory requirements based on our experience in implementing the rule and where permitted by the authorizing statutory provisions that motivated the rule.

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Through these steps, more fully explained in the attached responses, the Federal Reserve seeks to carry out our statutory duties in a manner that is both consistent with the legislation enacted by Congress and maximizes benefits and minimizes costs associated with our implementation efforts.

Sincerely,

A handwritten signature in black ink, appearing to be 'T. Johnson', written in a cursive style.

Enclosure

## Attachment

**1. Provide a detailed description of your agency’s rulemaking process, including the variety of economic impact factors considered in your rulemaking. Please note to what degree you consider the benefits from your rulemaking, including providing certainty to the marketplace and preventing catastrophic costs from a financial crisis. Also describe any difficulties you may have in quantifying benefits and costs, as well as any challenges you may face in collecting the data necessary to conduct economic analysis of your rulemaking.**

For every new regulation put forth by the Federal Reserve alone or jointly with other agencies, including those promulgated under the Dodd-Frank Act, it is the policy of the Federal Reserve to consider the various options available consistent with the statutory mandate being implemented; analyze the possible economic impact of implementing proposals to the extent permitted by available data; evaluate the compliance, record-keeping, and reporting burdens; and recommend the best course of action consistent with the statutory mandate based on an evaluation of the alternatives. If the regulation concerns an area where considerable information is available, a correspondingly more exhaustive regulatory analysis will be undertaken. For significant Dodd-Frank regulations, we assemble interdisciplinary teams, bringing together economists, supervisors, legal staff, and other specialists to help develop sensible policy alternatives and to help avoid unintended consequences. During the proposal stage, we specifically seek comment from the public on the costs and benefits of our proposed approach through surveys and meetings, as well as on alternative approaches to our proposal. This helps us to become informed about the benefits and costs of the proposed rule and craft a proposal that both is consistent with the Congressionally established mandate and minimizes regulatory burden. In adopting the final rule, we aim for a regulatory alternative that faithfully reflects the statutory provisions and the intent of Congress while minimizing regulatory burden. In addition, the Board is subject to two laws that require specific types of analysis--the Paperwork Reduction Act (“PRA”) and the Regulatory Flexibility Act (“RFA”). The PRA and RFA require evaluations of the rulemaking’s paperwork burden and effect on small entities, respectively. The Federal Reserve includes a separate analysis under each of these laws in its rulemaking publications.

Federal financial regulators face considerable challenges in quantifying all potential benefits and costs of a particular rule, such as the benefits from marketplace certainty or the prevention of a future financial crisis, especially in the context of the numerous related rules required by the Dodd-Frank Act to be issued during the same time period by a number of agencies. The GAO recently noted that the difficulty of reliably estimating the costs of regulations to the financial services industry and the nation has long been recognized, and the benefits of regulation generally are regarded as even more difficult to measure.<sup>1</sup> This task is further complicated by the need for the Federal Reserve to write rules that are often focused primarily on ensuring the safety and soundness of financial institutions. The benefits of a safe and secure financial system are clear, but they are difficult to quantify. Like other agencies, the Federal Reserve must often rely on information from regulated firms and from other affected parties for information regarding potential costs and benefits of a rulemaking. These parties often cannot quantify costs

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<sup>1</sup>GAO Report GAO-12-151, p.19; *See also* p. 36.

or benefits and, even where that is possible, may not have the incentive to provide that information or may be concerned about providing that information, which may reveal confidential business practices, in a public rulemaking.

**2. Provide your agency's current and future plans to regularly review and, when appropriate, modify regulations to improve their effectiveness while reducing compliance burdens. Please include a description of actions your agency has taken, or plans to take, to streamline regulations; for example, the Consumer Financial Protection Bureau's "Know Before You Owe" effort drastically simplifies mortgage and student loan disclosure requirements. Also note statutory impediments, if any, that prevent your agency from streamlining any duplicative or inefficient rules under your purview.**

The Federal Reserve has for many years had a policy of conducting a zero-based review of each of its regulations on a periodic basis--typically every five years. The purpose of this review is to update each rule, reduce unnecessary burden, and streamline regulatory requirements based on our experience in implementing the rule and where permitted by the authorizing statutory provisions that motivated the rule. In selecting regulations to be reviewed, we consider such factors as the length of time since the last evaluation of the regulation, our experience in administering the rule, the continued need for the rule, the type and number of complaints and suggestions received, the direct and indirect burdens imposed by the regulation, and the need to simplify or clarify the regulation and eliminate duplication.

With respect to rules adopted as a result of the Dodd-Frank Act, the Federal Reserve will review the impact of Dodd-Frank Act regulations once they are completed and firms have had a reasonable opportunity to implement these provisions. As part of this review, we will consider ways to reduce burdens that appear over time in the Dodd-Frank rules.

**3. Provide details of how your agency encourages public participation in the rulemaking process, including through administrative procedures, public accessibility, and informal supervisory policies and procedures.**

We are committed to soliciting and considering the comments of the public in the rulemaking process. We believe strongly that public participation in the rulemaking process improves our ability to identify and resolve issues raised by our regulatory proposals. During the proposal stage, we specifically seek comment from the public on the benefits and costs of our proposed approach, as well as on alternative approaches to our proposal. The Federal Reserve has long followed the practice of providing the public a minimum of 60 days to comment on all significant rulemaking proposals, with longer periods permitted for especially complex or significant proposals, such as our capital rules and our recent proposal on enhanced prudential standards. We also have extended our comment periods when it appears that the public interest would be served by allowing additional time for comment. Recently, for example, we extended the comment periods for our risk retention and Volcker rule proposals. We also favor seeking public comment on significant statements of regulatory guidance, and typically invite the public

to comment on major statements of supervisory guidance, such as our guidance regarding incentive compensation and stress tests.

We also encourage public participation in the rulemaking process by making it easy for the public to find, review, and submit comments on any proposal that we have opened for comment and published in the *Federal Register*. All of these proposals can be found on our public website and at [Regulations.gov](http://Regulations.gov). Public comments are accepted electronically and by mail. The rules and proposed rules that the Board expects to issue during the next six months are summarized in the Unified Agenda (also known as the Semiannual Regulatory Agenda), which is published twice each year in the Federal Register and posted on the Board's website. To ensure the public has sufficient notice of our rulemaking efforts under the Dodd-Frank Act, we also have published an anticipated schedule of these proposals on our website.

Moreover, Federal Reserve staff have participated in more than 300 meetings with outside parties and their representatives, including community and consumer groups, in connection with rulemakings required by the Dodd-Frank Act. To promote transparency, we post on our website a memorandum describing the attendees and subjects covered in any meetings involving non-governmental participants at which Dodd-Frank Act rulemakings are discussed. These summaries are posted on the Federal Reserve Board's website on a weekly basis.

To further transparency in the rulemaking process, the Federal Reserve also posts on its website all comments received on each proposed rule. Comments can also be viewed in person at the Board between 9:00 a.m. and 5:00 p.m. weekdays and can be obtained by formal request under the Freedom of Information Act. In addition, we make available to the public our examination manuals, supervisory letters, transaction approvals (and denials) and other matters of interest to the public related to our regulatory responsibilities.

**4. Provide details of how your agency addresses the unique challenges facing smaller institutions when dealing with regulatory compliance, including any related advisory committees your agency may have or other opportunities for small institutions to be heard by your agency. Please also detail how your agency responds to concerns raised by small institutions.**

The Federal Reserve has paid particular attention to reducing regulatory burden on community banking organizations. We have taken a number of steps to remain aware of the challenges faced by and the burdens of our proposals on community banks. For example, the Federal Reserve has established a set of community depository institution advisory councils at each of the 12 Federal Reserve banks for the purpose of gathering input from community depository organizations on ways to reduce regulatory burden and improve the efficiency of our supervision as well as to collect information about the economy from the perspective of community organizations throughout the nation. A representative from each of these 12 advisory councils serves on a national Community Depository Institution Advisory Council that meets semiannually with the Board of Governors to bring together the ideas of all the advisory groups.

The Board of Governors has also established a committee of Board members for the purpose of reviewing all regulatory matters from the perspective of community depository organizations. These reviews are intended to find ways to reduce the burden on community depository organizations from our regulatory policies without reducing the effectiveness of those policies in improving the safety and soundness of depository organizations of all sizes.

In addition, we are taking steps to reduce the burden on community depository organizations from our regulatory initiatives. For example, in its recent rulemaking proposals, the Federal Reserve has proposed and adopted streamlined approaches that reduce burden on community depository organizations that engage in fewer risky activities and have less complex structures. The Federal Reserve has also begun to separately and prominently identify which rulemakings apply to community depository organizations and what portions of particular rulemaking proposals are germane to community depository organizations, thereby reducing the attention community depository organizations pay to the many rulemaking proposals that are currently pending.

Moreover, for every new rule, the Board conducts an assessment and takes account of the potential impact that the rule may have on small businesses, small governmental jurisdictions, and small organizations as required under the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 et seq.). The Board prepares and makes available for public comment in the *Federal Register* an initial regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis is prepared for every rule that may have a significant economic impact on a substantial number of small entities and published in the *Federal Register*.

**5. Describe how regulatory interagency coordination has improved since the creation of the Financial Stability Oversight Council established by the Wall Street Reform Act. Provide specifics of how coordination has helped, either formally or informally, in your rulemaking process.**

The Dodd-Frank Act requires that the financial regulatory agencies consult or coordinate action on rulemakings under that Act in many cases. The Federal Reserve has actively worked with the other agencies in these joint and consultative rulemakings, both through direct contact with other agencies and through the FSOC. The FSOC has provided a ready forum for interagency consultation on rulemakings. These consultations have helped highlight the interaction between rulemakings under development by the Board and the broader set of rulemakings by other agencies under the Dodd-Frank Act, as well as improving our understanding of the interplay between proposed policy alternatives and existing regulation. The interagency consultation process has included staff discussions during the initial policy development stage, sharing of draft studies and regulatory text in the interim phases, and dialogue among agency principals in the advanced stages of several rulemakings.

The Federal Reserve also consults regularly with its fellow bank regulatory agencies on matters that might affect institutions supervised by the other bank regulatory agencies as well as on

matters of common interest where a single regulatory approach across banking organizations of different charters would reduce compliance burden and risk. Members of the Board as well as staff at senior levels have established working associations with their peers at other agencies that include regular meetings to discuss policies of common interest and applicability. These many avenues of consultation at multiple levels increase the coordination and consistency of regulation across a banking industry that has multiple regulators and charters. We have expanded these channels to include regular consultation with the SEC, CFTC, CFPB and other agencies as changes in law have caused our spheres of regulatory responsibility to increasingly overlap.