



September 17, 2012

United States Department of the Treasury
Attn: Financial Research Fund Assessment Comments
1500 Pennsylvania Avenue, NW
Washington, DC 20220

**RE: 31 C.F.R. Part 150 – Assessment of Fees on Large Bank Holding Companies
and Nonbank Financial Companies Supervised by the Federal Reserve
Board to Cover the Expenses of the Financial Research Fund
RIN 1505-AC42**

Dear Sir or Madam:

The American Financial Services Association (“AFSA”) welcomes the opportunity to comment on the interim final rule (the “Interim Final Rule”)¹ issued by the United States Department of the Treasury (“Treasury”) to establish assessments under Section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).² Under the Dodd-Frank Act, Treasury is charged with establishing the assessments as a means of permanently funding the expenses of the Office of Financial Research (“OFR”) and the Financial Research Fund.³ OFR expenses include the combined expenses of the OFR, the Financial Stability Oversight Council (the “Council”)⁴ and the costs incurred by the Federal Deposit Insurance Corporation (“FDIC”) in implementing its orderly liquidation authority.⁵ As described by the Interim Final Rule, Treasury intends to take these estimated budgeted expenses, including those expenses allocated from the Council and FDIC, and allocate them on a semi-annual basis across those bank holding companies with total consolidated assets in excess of \$50 billion and nonbank financial companies designated by the Council for supervision by the Board of Governors of the Federal Reserve System (the “Board”) under Section 113 of the Dodd-Frank Act.⁶ We greatly appreciate the opportunity to provide industry insight and comments on this important Interim Final Rule and the very meaningful financial implications that will result for subject institutions.

By way of brief background, AFSA represents a broad cross-section of financial companies, including large bank holding companies and nonbank financial companies. AFSA’s members include leading consumer finance companies, automotive lenders and residential mortgage lenders, as well as bank holding companies and their non-depository affiliates. Some

¹ Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board to Cover the Expenses of the Financial Research Fund, 77 Fed. Reg. 35 (Jan. 3, 2012) (to be codified at 31 C.F.R. pt. 150).

² Dodd-Frank Act, Pub. L. No. 111-203, § 155.

³ *Id.* at § 155(d).

⁴ *Id.* at § 118.

⁵ *See id.* at § 210(n)(10).

⁶ 77 Fed. Reg. 35.

members are captive financing arms of larger manufacturing or retail companies, while other members are independent providers of financial products and services.

In this letter, we reiterate the concerns expressed in our March 5, 2012, letter to Treasury in response to Treasury's proposed rule on the assessment of fees on large bank holding companies and nonbank financial companies supervised by the Board to Cover the Expenses of the Financial Research Fund ("Proposed Rule").⁷ AFSA's concerns were not, by and large, addressed in the Interim Final Rule, and we hope that Treasury will incorporate them into the final rule.

Establishing the Assessment Basis

The Interim Final Rule establishes the calculation of the assessment basis for the initial assessment period and each of the subsequent assessment periods as the sum of the budgeted operating and capital expenses during a given assessment period for the OFR and Council, plus reasonable implementation expenses of the FDIC under its orderly liquidation authority.⁸ This assessment basis is then allocated at a set assessment fee rate calculated for the relevant assessment period among the larger bank holding companies and nonbank financial companies that will be designated by the Council to be subject to Board supervision.

Treasury proposes to determine the assessment fee rate by dividing the assessment basis of budgeted or estimated expenses by the aggregate of total assessable assets of assessed companies.⁹ We believe that Treasury must consider all of the factors contained in Section 115 when calculating the assessments for large bank holding companies and designated nonbank financial companies. In fact, Congress specifically mandates that Treasury consider section 115 criteria. The Dodd-Frank Act makes clear that Treasury is mandated to establish an assessment schedule "that takes into account differences among such companies based on the considerations for establishing the prudential standards under section 115."¹⁰ As such, the Interim Final Rule is not consistent with the plain, clear working of the Dodd-Frank Act. The justification for the methodology articulated in the Interim Final Rule – that it would increase simplicity and transparency – may be laudable goals but they are not in the text of the statute. The mandate from Congress that Treasury take into account differences in companies based on the section 115 criteria is.

We understand that Treasury has indicated in the Interim Final Rule that it is too difficult and subjective to deploy an assessment scheme that looks at the Section 115 criteria. Nonetheless, we believe it is important to consider Section 115 criteria. We suggest that Treasury use asset size as a baseline and grant itself the ability to adjust the assessment fee up to 50% of the proposed assessment based upon the Section 115 criteria. This would be transparent, easily

⁷ See 77 *Federal Register* 35 (January 3, 2012).

⁸ See *id.* at 44 (the calculation of the assessment basis is set forth in the text of the Proposed Rule as 31 C.F.R. § 150.4).

⁹ For reasons set forth below, we believe that using total assessable assets as the denominator for determining the assessment fee rate is an overly simplistic formula and ignores important policy considerations mandated by Congress for Treasury to consider in establishing its assessments.

¹⁰ Dodd-Frank Act, Pub. L. No. 111-203, § 155(d).

understandable and allow companies to understand the range of their potential assessment, while at the same time, implement Congressional intent with respect to all of the Section 115 criteria.

Exemption for Captive Finance Companies

The legislative history to the Dodd-Frank Act clearly indicates that certain firms, such as nondepository captive finance companies, “do not pose the types of risks that warrant” designation under Section 113 and, by continuation, will not be assessed under Section 155.¹¹ Thus, we ask that captive finance companies be carved-out from OFR assessments pursuant to the safe harbor language in Section 170 of the Dodd-Frank Act. Section 170 states that the Board “shall” promulgate regulations setting forth “safe harbor” criteria, demonstrating that Congress clearly intended certain categories of nonbank financial companies to be exempt from being designated and, therefore, from paying an OFR assessment.

Additional Items

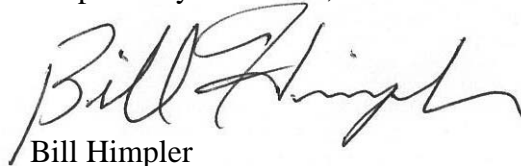
AFSA requests that Treasury indicate in its confirmation statements what “comparable financial information” it may require from non-public companies and/or those that do not use GAAP reporting, as well as the rationale behind why Treasury is asking for such information (See Section 150.3(b)(4) of the Interim Final Rule).

AFSA also suggests that any modifications to the assessment process for non-banks be subject to public notice and comment.

Conclusion

AFSA appreciates the opportunity to comment on the Interim Final Rule and welcomes the opportunity to discuss further any of the issues addressed in this response letter. If you have any questions or if we can provide any additional information, please feel free to contact me at (202) 466-8616 or bhimpler@afsamail.org.

Respectfully submitted,



Bill Himpler
Executive Vice President
American Financial Services Association

¹¹ See 155 Cong. Rec. H14431 (daily ed. Dec. 9, 2009) (colloquy between Chairman Barney Frank and Rep. Mary Jo Kilroy regarding the scope of coverage for criteria the Council was to consider under H.R. 4173).