December 13, 2010

Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed Accounting Standards Update, Receivables (Topic 310): Clarifications to Accounting for Troubled Debt Restructurings (File Reference No. 1880-100)

Dear FASB members and staff:

Bank of America Corporation provides a diverse range of banking and nonbanking financial services and products domestically and internationally. We are the largest bank in the U.S. in terms of outstanding loans and have completed and continue to complete a large volume of loan modifications. Accordingly, we are very focused on the efforts of the Financial Accounting Standards Board (the Board) to clarify the guidance on identifying restructurings that constitute troubled debt restructurings (TDRs) as outlined in the Proposed Accounting Standards Update, Receivables (Topic 310): Clarifications to Accounting for Troubled Debt Restructurings by Creditors (the Proposed Update).

We understand that the Board’s goal for the Proposed Update is to address perceived diversity in practice in identifying TDRs. However, we believe that the Proposed Update is inconsistent with established practice and would result in a significant change to the definition of a TDR. Many loans that are not actually impaired or for which there has been no concession would be reported as a TDR merely because the creditor could not determine whether the borrower would otherwise have access to funds at a market rate. In addition, the Proposed Update would significantly change established practice with regard to short-term modifications, an area in which we believe there is little diversity. As a result, the reported population of modifications disclosed as TDRs would expand dramatically with little or no benefit to the readers of the financial statements. Therefore, we do not support the following major changes in the Proposed Update:

- The presumption that the restructuring is automatically considered a TDR if the debtor does not otherwise have access to funds at a market rate.
- The requirement to conclude whether modifications that result in an insignificant delay in cash flows are TDRs.
In addition, the proposed transition provisions are unworkable, as they require creditors to retroactively review modifications performed during prior years and evaluate them under the revised guidance. Finally, we are extremely concerned about the unintended consequence of understating credit impairment reserves and would like the FASB to permit impairment reserves for certain TDRs that are not impaired to be measured in accordance with ASC 450 (formerly FAS 5) rather than ASC 310-10-35 (formerly FAS 114).

These points are discussed in more detail below.

**Definition of a TDR**

We believe that the ability of a borrower to obtain funds at a market rate should be one of the factors considered in determining whether the modification of a loan is a TDR. However, professional judgment is required to assess the importance of this factor in the underwriting process. We do not believe that this process should be overridden based on a single factor, especially when that factor may not be able to be objectively determined.

Under the current guidance, there are two steps in the process of assessing whether a loan modification should be considered a TDR. The first step is the determination of whether the borrower is experiencing financial difficulty. The second step is the assessment of whether the creditor has granted a concession to the borrower. The Proposed Update states that “[i]f a debtor does not otherwise have access to funds at a market rate for debt with similar characteristics as the restructured debt, the restructuring would be considered to be at below a market rate and therefore should be considered a troubled debt restructuring.” (ASC 310-40-15-8A)  This guidance skips the required steps and jumps immediately to the conclusion that the borrower is experiencing financial difficulty and that the creditor has granted a concession. We believe that a significant number of loan modifications will now be reported as TDRs, even in the absence of both financial difficulties and concessions, because the creditor cannot determine whether the borrower has access to third party funds at a market rate.

We agree that the debtor’s inability to access funds at a market rate may be an indicator of financial difficulty but we do not believe that it should be a singular determining factor. It may be difficult to determine a market rate for loans due to lack of transparency in the market, especially with regard to commercial loans. In addition, market illiquidity in times of crisis can severely restrict access to credit. This issue is discussed by in the FFIEC October 2009 Policy Statement on Prudent Commercial Real Estate Loan Workouts (SR 09-7):

> “Loans to commercial borrowers can have short maturities, including short-term working capital loans to businesses, financing for CRE construction projects, or loans to finance recently completed CRE projects for the period to achieve stabilized occupancy. Many borrowers whose loans mature in the midst of an economic crisis have difficulty obtaining short-term financing or adequate sources of long-term credit due to deterioration in collateral values despite their current ability to service the debt.”
Residential mortgage loan borrowers may face similar obstacles. For example, if their homes are worth less than the outstanding debt owed, they may not have access to traditional sources of financing even though they may have sufficient income to make all required payments.

In addition, we do not agree that the borrower’s lack of access to funds at a market rate is sufficient evidence to conclude that the creditor has granted a concession. The current creditor may have a more in-depth knowledge of the borrower’s circumstances or credit history than third parties and thus might be willing to refinance a loan when other creditors might not. Instead of relying on a borrower’s perceived access to funds, we believe that the guidance’s primary consideration should be whether the creditor is adequately compensated for any modifications that are made to the loan and the risk associated with that specific borrower. This can be accomplished by various means which might include increasing the interest rate, requiring that the borrower inject additional equity into the business, receiving additional collateral and/or obtaining third party guarantees. In these instances, credit professionals can adequately assess whether the modified terms are commensurate with the credit risk of the borrower. They may not, however, be prepared to state with certainty whether the borrower could obtain funds under similar terms from third parties, as would be required under the Proposed Update.

The proposed guidance would also create a potential audit issue because borrowers are not compelled to apply for credit elsewhere, thus turning the question of their access to funds at a market rate into a subjective exercise. If the creditor believes it is likely that the borrower might have access to funds from an alternative source at a market rate, the creditor may not have evidence to support this belief. We believe it is unreasonable to place this burden of proof on the creditor.

We believe that the ability of a borrower to obtain funds at a market rate should be one of the factors considered in determining whether the borrower is experiencing financial difficulty. However, we do not believe it should be a factor in assessing whether the creditor has granted a concession, as this is best determined based on an assessment as to whether the modified terms will adequately compensate the creditor for the credit risk of the modified loan. The identification of TDRs requires the use of professional judgment during the underwriting process which should not be overridden based on a single fact that may not be objectively determinable or meaningful.

**Insignificant Delay in Contractual Cash Flows**

We do not agree that a restructuring that results in an insignificant delay in contractual cash flows should be evaluated to determine whether it is a TDR as the costs would outweigh any potential benefits. Creditors routinely enter into short term modifications that have an insignificant impact on contractual cash flows, and the cost of developing systems to track and evaluate these immaterial modifications could be significant. For example, creditors may provide short term extensions to commercial loan borrowers that are not having financial difficulty but need some additional time to finalize the terms of a permanent refinancing. These types of modifications are not routinely tracked on an automated system. Other modifications
are entered into with borrowers that are having temporary financial difficulties but are expected to resolve those difficulties within a short period of time. If the borrowers are successful, there would be little benefit to tracking and disclosing these short-term modifications, and any impairment reserves would be negligible. If the borrowers continue to have financial difficulty and request a second modification or a long term modification, the subsequent modification would be evaluated to determine whether it is a TDR.

Many banks exclude short term modifications of less than 90 days from TDR designation in a practice that has historically been supported by banking regulators. In addition, we believe that a loan is not impaired if the creditor expects an insignificant delay in contractual cash flows. We fail to see how readers would benefit from the application of TDR guidance to these immaterial modifications. However, to ensure consistency and prevent potential abuse, we recommend that the FASB explicitly exclude modifications of 90 days or less from the definition of a TDR. We also recommend that multiple short term modifications be aggregated when determining whether the 90 day threshold has been met.

**Retrospective Identification of TDRs**

The proposed transition guidance allows for prospective measurement of impairment. However, it requires a retrospective identification of TDRs going back to the beginning of the earliest period presented, resulting in the restatement of previously reported periods. This would be a tremendous or perhaps impossible task if the guidance is adopted as currently proposed. It is not feasible, for example, to assess whether all modifications performed in prior periods were at a market rate or whether borrowers otherwise had access to funds at market rates. The requirement to identify and review all short term modifications is similarly not workable. Short term modifications are not routinely tracked on an automated system in a manner that would permit efficient retrieval. Even if all modifications could be identified, the evaluation process itself would be extremely time consuming and would require a certain degree of expertise to ensure that the accounting guidance is consistently applied. The cost of retroactive application would be high and we believe that the resulting disclosures would not be meaningful to the users of the financial statements. Therefore, we strongly urge that any changes resulting from adoption of the Proposed Update be applied prospectively to loan modifications performed after the effective date.

**Impairment Measurement**

Currently, the impairment reserve or allowance for loan and lease losses (ALLL) for TDRs is calculated in accordance with the guidance of ASC 310-10-35 even if the TDR is performing in accordance with its modified revised terms. This guidance requires a creditor to measure impairment for a TDR based on the present value of expected cash flows discounted using the original effective interest rate on the loan. As a result, the impairment reserve for a performing TDR that carries an interest rate that is equal to or greater than the original effective interest rate on the loan will typically be zero. The Proposed Update would result in a significant increase in the number of modifications that are reported as TDRs due to the creditor’s inability to determine whether the borrower has access to third party funds at a market rate or due to the
inclusion of short-term modifications. Many of these newly identified TDRs will be performing in accordance with their contractual terms and will not have been subject to a decrease in the effective interest rate. Application of the guidance in ASC 310-10-35 will therefore result in an allowance of zero for a population of loans that could be significant. Accordingly, these loans would be excluded from the population of loans for which the ALLL is calculated pursuant to ASC 450. As a result, we believe that this would lead to an understatement of the required ALLL.

We urge the Board to change the impairment measurement methodology for TDRs that (a) are performing in accordance with their modified contractual terms and (b) have a modified effective interest rate that is equal to or greater than the original effective interest rate on the loan. We propose that the impairment reserve for such TDRs be measured in accordance with ASC 450 (formerly FAS 5) instead of ASC 310-10-35 (formerly FAS 114) to ensure that impairment reserves are not understated.

We appreciate the opportunity to express our views in this letter. Should you have any questions, please feel free to contact Randall Shearer (980.388.8433) or me (980.387.4997).

Sincerely,

John M. James
Senior Vice President and
Corporate Controller

cc: Neil A. Cotty, Chief Accounting Officer
Randall J. Shearer, Accounting Policy Executive