FIRSTCAPITAL BANK
OF TEXAS

August 29, 2012

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop2-3
Washington, D.C. 20219

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Basel III Capital Proposals

Ladies and Gentlemen:

I appreciate the opportunity to provide comment on the Basel III proposals that were recently approved by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

I am in support of increasing the capital requirements for banks in our country to ensure that our industry can weather the storms that will come our way in the future. I think we all have that goal in common. However, I do have concerns about the proposals which have been approved by the agencies and placed out for comment.

Our bank was formed in 1998 in Midland, Texas. Since that time we have entered into the Lubbock and Amarillo markets. We are now located in the three major markets in the Panhandle of Texas. Since we began in 1998, we have grown to over $650 million in assets. We are primarily a business bank, serving small to medium size businesses in each of our markets. We also serve many individuals of all means, especially through our mortgage division which provides over $200 million per year in home loans to people living in our three markets. We are dedicated to the communities we serve and we strive to be a leader in helping to improve each of our communities. Just one example of this was our recent donation of 26 residential lots to Habitat for Humanity in our Midland market. That donation provided Habitat with about a three year supply of lots on which to build affordable housing for needy families. At the time, Habitat was almost out of lots on which to build.

We, like most other community banks in our country want to make sure we are able to continue serving our communities in the way we have in the past. A strong economy is dependent on job growth and job growth is dependent on availability of capital to fund the small businesses of our communities that produce most of the jobs. We want to ensure that the new rules do not reduce the ability of our community banks to provide this capital.

310 WEST WALL STREET SUITE 100 MIDLAND, TEXAS 79701 432.686.0044 FAX 432.686.9311
WWW.FCBTEXAS.COM

The following items are the areas of the proposal in which I have concerns:

I. Requirement that gains and losses on available for sale securities must flow through to regulatory capital.

Our country is in an unprecedented period of low interest rates. Most banks have significant gains in their investment portfolios. This proposal would serve to increase regulatory capital in the short term. As interest rates begin to rise, this inflated capital would be quickly reversed and could move very dramatically in the other direction. While nothing will have changed in a bank's equity, its regulatory capital ratios could change very dramatically. This proposal will introduce a significant amount of cyclicality and volatility into the system which is opposite of what I believe the goal should be.

Our bank and others could be forced to reduce the size of our balance sheets as the economy begins to improve, simply because interest rates begin to rise. This could serve to undermine an economic recovery as banks reduce lending and concentrate on pulling back to maintain capital ratios. Our small business customers and consumer customers will be impacted by the reduced availability of credit under this scenario.

Our bank's reaction to this will probably be to sell all of our AFS securities and to place all future purchases in Hold to Maturity. This will eliminate the cyclicality and volatility of the proposal, but it will also eliminate our ability to manage our investment portfolio through different interest rate and economic cycles, a core tool to offset the inherent rate risk in our loan and investment portfolios.

II. Elimination of Trust Preferred Securities

Our bank has held about $3 million in Trust Preferred Securities for about 10 years. This is not a large portion of our capital, but is a very cost effective source of capital for us and has allowed us to grow our bank and as a result to better serve our customers. The elimination of this source of capital will reduce our ability to grow our balance sheet by about $35 million. This will reduce the amount of loans we will be able to provide to our communities to support job growth. When you multiply this affect across the country, the potential reduction in loan availability is significant. This proposal is in direct contradiction of the country's goal to spur job growth.

Trust Preferred Securities were grandfathered under Dodd –Frank, but are now being eliminated by the new capital proposal. Community banks have much more limited sources of capital than the large banks do and this rule is an additional strike against community banks.

III. Increased risk weighting for residential mortgage loans

Our bank provides a significant number of mortgages to people living in the three markets we serve. We are one of the largest community bank providers of mortgages in these markets. This proposal along with some of the proposals being considered by the Consumer Financial Protection Bureau threaten to significantly reduce or even drive our bank away from this very important business segment.

Since the inception of our bank, we have never lost one cent on a residential home loan. Our underwriting has been very strong as opposed to many of the non-bank mortgage lenders who were the real culprit in the housing crisis. However, the community banks are being forced to pay dearly for the sins of others. The new capital proposals relative to the risk weighting of residential mortgages are higher in many cases than other loan types that would be considered much riskier in our experience. This one section of the proposal will definitely reduce the number of loans that we are able to provide in our markets.

In addition to the effect on our ability to lend, the change from assigning "risk weightings to asset classes" to assigning "risk weightings to individual loans" will create an administrative nightmare. We will have to add "at least" one full time person, and probably more, just to assign and maintain risk weightings on the classes of loans that are identified in the proposal. You will not be able to just assign a risk weighting when you book the loan, you will have to continually re-evaluate the risk weightings based on changes in collateral values, past due status and other risk factors.

I question the ability to truly examine a bank's performance in properly assigning risk weightings under this rule due to the amount of people and time it will take to review the data.

I question the comments I have heard from some recently that the new proposal will have a small effect on most community banks. Much of the information needed to evaluate the effect is not available. Each bank will be different and most community banks, if any, have not yet performed the massive exercise necessary to evaluate and assign the risk weightings to every loan in their portfolio.

IV. Requirement to hold capital for credit enhancing representations and warranties on 1-4 family residential home loans which have been sold into the secondary market

My first concern about this section of the proposal is that it is ambiguous. I am unclear as to what reps and warranties would cause our bank to set aside capital on a loan we have sold and for how long. Some of the reps and warranties in our correspondent contracts as they relate to fraud, misrepresentation or later identified deficiencies in underwriting, are considered life of the loan reps and warranties. Since our bank has sold well over $1 billion in loans over the last 10 years, we could be required to set aside $85 to $100 million in capital for loans which have been sold for a long period of time. This would place us in a capital deficient position we could never recover from. If you grandfather those loans and tell us we only need to maintain capital against loans sold on a go forward basis, then we will have to exit this business altogether.

The reps and warranties which refer to early default or premium refund clauses do not subject the bank to the repurchase of the loan. Our only liability would be to refund the premium we earned along with a processing fee. For example, on a $275,000 government guaranteed loan, the premium earned could be around $6,950 and the processing fee would be $2,500. This would represent the bank's only liability for early default on the loan. The rule presently seems to state that the bank would have to maintain capital for 100% of the loan vs. the actual liability of $9,450. It seems to me that the capital we maintain should be commensurate with the amount of risk we are assuming.

In the 10 years we have been involved in the mortgage loan business, we have only had to repurchase one loan. The loan we repurchased was based on a disagreement regarding the underwriting rules. We repurchased the loan and it has paid as agreed to this point.

This rule as presently drafted threatens to drive every community bank in the country out of the mortgage lending business. It probably means that all of the business would move to the big banks assuming they have a way around the rule. I can't bring myself to believe that is what is intended.

V. Change in risk weighting for home equity and second lien loans

We presently hold about $12 million in second lien loans to customers in our markets. We have provided this program for over five years and have never experienced a loss on a loan in this segment of our portfolio. In fact, we almost never have any past due loans in this segment of our portfolio. These loans are priced higher to compensate for the added risk and since we have not experienced losses, it has been a very profitable segment of our business.

This program has been used by the bank to supplement the bank's secondary mortgage program. It has allowed our customers to achieve the best pricing they could achieve on their mortgage loan. This proposal will cause our bank to discontinue this program and to discontinue making any kind of home equity loan.

VI. New rules regarding "High Volume Commercial Real Estate"

I feel that this rule is probably a good one from the standpoint of recognizing the different risk profiles that exist in these types of loans. It will tighten up the underwriting and structuring of these transactions between banks. However, it will reduce the number of development projects nationwide and it may cause our bank to turn away from deals that we might have been able to do before. We will strive to make sure that every development project we do will fall into the 100% category.

My biggest concern with this rule is the administrative concern of assigning a risk rating to every single loan based on all of the criteria and the exceptions provided in the rule. This will necessitate increased staffing to accomplish.

VII. Proposal to increase risk weights on delinquent loans

We are fortunate to have very few delinquencies at this time that would cause this rule to affect us. That could change based on economic conditions. My concern with this rule is that we already set aside reserves for loans that fall into a past due status of this severity. By also increasing the amount of capital we hold based on the past due status, we are being required to set aside capital two times. I feel that the risk related to problem loans should continue to be managed through the loan loss reserve guidance and not by adding an additional capital requirement.

The impact on our bank to this rule will be to increase our aggressiveness in moving loans that become 90 days past due off the balance sheet. It will reduce our willingness to work as long with a borrower to remediate issues.

In conclusion, the proposal as it is currently written will greatly impact our bank in the following ways:

1. It will significantly increase the amount of capital we will need to hold above and beyond the increase which would occur as a result of the increased "capital ratios". Each item I have detailed above will either increase our risked based assets or it will decrease the amount of capital we have. This is with no change in the way we do business.

2. I have no way at this time to ascertain the full impact on our bank because of the amount of work that we will need to undertake to understand the rules, train our staff on how to apply the rules to our balance sheet, implement the coding of each individual loan in our portfolio with the new risk weights, re-program our core processing software to handle the new coding requirements and then create the

necessary reports to analyze the data. We will probably be required to hire a consultant to help us work through the front end of the process to assure that we have accurate data and to assure that our staff fully understands how to code the loans properly.

3. If the proposal to hold capital on loans we have sold into the secondary market force us to exit the mortgage business, we will lose in excess of $1 million after tax to our bottom line annually which will have a big impact on our overall profitability. We will have to lay off 23 of our 150 person staff. When you multiply this affect across the country as other community banks are forced to do the same, the number of job layoffs and the loss of income to the industry are significant.

While I fully support an increase at some level in the amount of capital that banks hold, the cumulative effect of each of the items reflected above will have a severe impact on most of the community banks in this country. I strongly urge you to consider this impact and to consider a possible exemption for most of our community banks from the bulk of these rules. Our nation's community banks need to be able to continue serving our communities and helping to strengthen our local economies.

Thank you for your consideration.

Sincerely,

Ken L. Burgess, Jr.

Ken L. Burgess, Jr.
Chairman

cc: Senator John Cornyn
Senator Kay Bailey Hutchison
Congressman K. Michael Conaway
Congressman William M. "Mac" Thornberry
Congressman Randy Neugebauer
Mr. Wayne Abernathy, American Bankers Association
Mr. Eric Sandberg, Texas Bankers Association