BANK INDEPENDENT®

Radically Original™

October 19, 2012

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
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Washington, D.C. 20551

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
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Officer of the Comptroller of the Currency
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Mail Stop 2-3
Washington, D.C. 20219

Re: Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and
Prompt Corrective Action and Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements.

Dear Ladies and Gentlemen:

We appreciate the opportunity to comment on the agencies' proposal to revise risk-based and leverage capital requirements and change the general risk-based capital requirements for determining risk-weighted assets. While we recognize the proposals would be consistent with agreements reached by the Basel Committee on Banking Supervision (BCBS) in Basel III and would harmonize the agencies' rules for calculating risk-weighted assets by incorporating certain international capital standards of the BCBS, we strongly urge the agencies to consider the uniqueness of the United States banking system, specifically the community bank model, before officially adopting the proposed rules. While consistency and harmonization are lofty global goals, our position is that applying Basel III rules to community banks does NOT add protection to the FDIC Insurance Fund and effectively adds no additional protection to the U.S. taxpayer. It is also our position that applying Basel III rules to community banks will significantly withdraw credit from the communities they serve.

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Member FDIC

Bank Independent was founded in 1947 following the departure of a large statewide bank seeking better growth opportunities. The ensuing void left the area residents without banking services and badly needed capital. As a result, several area farm families organized Bank Independent which now serves 18 Northwest Alabama communities through 27 offices in a 6 county region. Bank Independent has stayed true to its original mission of serving all people in local communities, regardless of population density, to insure the economic well being of all socio-economic groups. Today, Bank Independent has grown to $1 billion in assets, and most importantly, $835 million in loans outstanding. With $900 million in deposits (as of June 2012), Bank Independent has emerged as the largest depository of FDIC insured funds within our six county service area, employing over 500 individuals.

Like Bank Independent, U.S. community banks serve a unique role in the global economy. While other countries rely on a limited number of large institutions to serve the needs of predominantly urban populations, U.S. community banks insure growth opportunities for small, rural communities. This focus on the underserved ensures that all individuals have the same economic opportunity regardless of domicile. In fact, it was the community banks across the U.S. that continued to lend much needed money to qualified borrowers during the most recent financial crisis.

We believe that the new proposed rules will move the United States to a global model proven to abandon rural growth in favor of centralized populations. This move has resulted in an increasing economic disparity for much of the world's population. The institution of the proposed rules in their present form will clearly reduce the ability of U.S. community banks, including ours, to provide growth and basic financial services to *all* Americans.

There are many parts of the new proposed rules that are problematic for community banks as a whole and are problematic specifically for our bank. The best and simplest solution for community banks and their communities would be to entirely exempt community banks from Basel III. We believe the current regulatory rules provide sufficient authority and oversight to community banks to protect the FDIC Insurance Fund from catastrophic community bank losses. Basel III applied to community banks will not provide any additional protection and will remove available lending from many communities. Basel III was targeted toward the systemic risk international banks pose to the national economy, not to a conservative community bank model.

Our comment letter will focus on the parts of the proposal that will have a material negative impact on the bank and on our communities:

1. **Raising the Common Equity Tier 1 (CET1) minimum Ratio from 2% (Basel II) to 7%.**
    a. Bank Independent's cumulative capacity to grow Risk Weighted Assets over the next seven years will decline from $4.3 billion to $360 million.
    b. Increasing the CET1 minimum ratio at community bank holding companies provides no additional depositor protection yet severely limits Risk Weighted Asset Growth.

c. Since 2004, BancIndependent, Inc. (BancIndependent) successfully has managed its CET1 Ratio between 4.3% and 5.4% (including the proposed RWA weightings).
d. Since 2004, BancIndpendent has almost tripled its retained earnings from $15.5 million to $43.6 million allowing the bank to reinvest over $500 million in loans to the communities we serve. A 7% minimum CET1 ratio would not have allowed us to strengthen the bank and would have prevented us from lending this $500 million to our communities.
e. International Banks have access to capital markets to raise common equity while community banks have very little access to these markets.
f. Capital requirements should be geared to the risk and complexity of the bank's business model.

2. Excluding Trust Preferred Securities from Tier 1 Capital.

a. Existing TRUPS are no longer a toxic fuel for uncontrolled growth as most community banks who mismanaged TRUPS have failed and those who successfully managed growth with TRUPS have survived.
b. Dodd-Frank Act never intended to phase out TRUPS from Tier 1 Capital for banks under $15 Billion.
c. Community banks have limited or no access to capital markets to raise common equity so they have relied on loss absorbing equity such as TRUPS.
d. TRUPS have long been a source of stable, regulator accepted capital for community banks. Current regulations allow the capital to be managed as loss absorbing common equity when injected in the bank.
e. BancIndependent has injected 100% of its TRUPS as common equity in the bank.

3. Risk Weighting of Residential Real Estate Loans.

a. The increased risk weightings are contrary to all efforts to grow the economy and will negatively impact home lending nationwide.
b. The increased risk weightings will also increase capital requirements by as much as 300%.
c. The new rules treat residential mortgage loans in volatile markets (Miami, FL) the same as residential mortgage loans in stable markets (Sheffield, AL).
d. The new rules (higher risk weightings for balloon notes) will encourage increasing interest rate risk during a time of record low interest rates by encouraging longer term fixed rates (S&L crisis).

FDIC Insurance Fund

The FDIC Insurance Fund is built by bank contributions. Bank Independent has a vested interest in the Fund's protection. The Fund represents capital taken out of the bank and any additional risk to the FDIC Insurance Fund risks additional loss of capital. If we believed the proposed new capital rules would protect the Fund, we would be a big proponent of the proposed new rules. While additional capital is necessary at larger international banks to reduce the systemic risk of an economic collapse, we believe the community bank failures were in part a byproduct of the large bank problems and in part a management issue, not from a lack of capital. Most of the community banks that failed would have met the elevated capital ratios proposed by Basel III. The management of those banks, even with the elevated capital levels would have still led the bank to failure. Current regulations allow for adequate management of community bank risks. The proposed new capital rules not only add NO value to the reduction of risk to the FDIC Insurance Fund and taxpayer, but also will encourage community banks to take excessive risks to provide sufficient returns to incremental increases of capital. It will NOT decrease the risk of community bank failures and it will bring unintended harmful consequences to community banks and harm to the U.S. economy.

Lower risk banks should be supported with lower capital requirements

Minimum capital requirements should mirror the risk of a bank's business model. Your loan to value supervisory guidance applied to our lending activities suggest you hold the same opinion. Your supervisory guidance recognizes that different business models warrant different capital requirements (higher risk loans require lower maximum loan-to-values). We believe the same principles apply to capital requirements for banks as a whole.

We do NOT have consistent capital requirements for our loan customers. Consistency would make life easier; however, there is recognition that each loan customer possesses a different risk model, thus requiring a different level of capital. If we applied the most conservative underwriting standards consistently to ALL of our customers, likely we would reduce our losses, but we would also significantly reduce our lending. More specifically, if we required families to pay 35% down (the capital your supervisory guidance requires for the purchase of raw land) to buy a home, home lending would disappear. Requiring the same (most conservative) capital levels of your banks may (theoretically) ensure the prevention of a global financial catastrophe, it would also ensure the disappearance of conservative banking models.

Just as investors likely can come up with 35% down to purchase raw land, most families can't come up with 35% to buy a home. While big banks will be able to come up with the higher capital levels required, community banks will find it difficult to maintain their current business model and meet the much elevated minimum capital ratios.

Bancindependent's retroactive view of the new proposed capital rules

Since 2004, BancIndependent has successfully managed its CET1 ratio between 4.3% and 5.4% (including the proposed RWA weightings). During this time, Bank Independent has almost tripled its Retained Earnings from $15.5 million to $43.6 million. The bank has reinvested its Retained Earnings into $500 million of loans in the communities we serve. The bank has strengthened itself to become the largest holder of deposits in our six county North Alabama footprint. Had the CET1 minimum Ratio of 7% been put in place in 2004, our communities would have not had access to our $500 million of lending.

In 2005, BancIndependent was given regulatory approval to acquire 17 branches, with $375 million of deposits, from a financial institution who years later failed. The successful management of this acquisition not only strengthened BancIndependent, but also saved the FDIC Insurance Fund the $375 million of deposits that were acquired. Had the new proposed capital rules been in place, we would not have been able to proceed with this acquisition and the $375 million would have been lost to the FDIC Insurance Fund.

The proposed new capital rules place the majority of enhanced protection in additional capital and very little (if any) enhanced protection in management of the capital. In a recent Office of Inspector General's "Material Loss Review" on a 2012 failed community bank, four years prior to the bank failure, the only CAMELS component receiving a rating below "Satisfactory" was its Management component. The bank would have met the proposed elevated capital minimums at the time of the lowered management rating. Four years after receiving the lowered management rating, the bank lost over 40% of its assets. Additional capital may have saved the FDIC Insurance Fund a small percent of the loss, but it would not have prevented the failure.

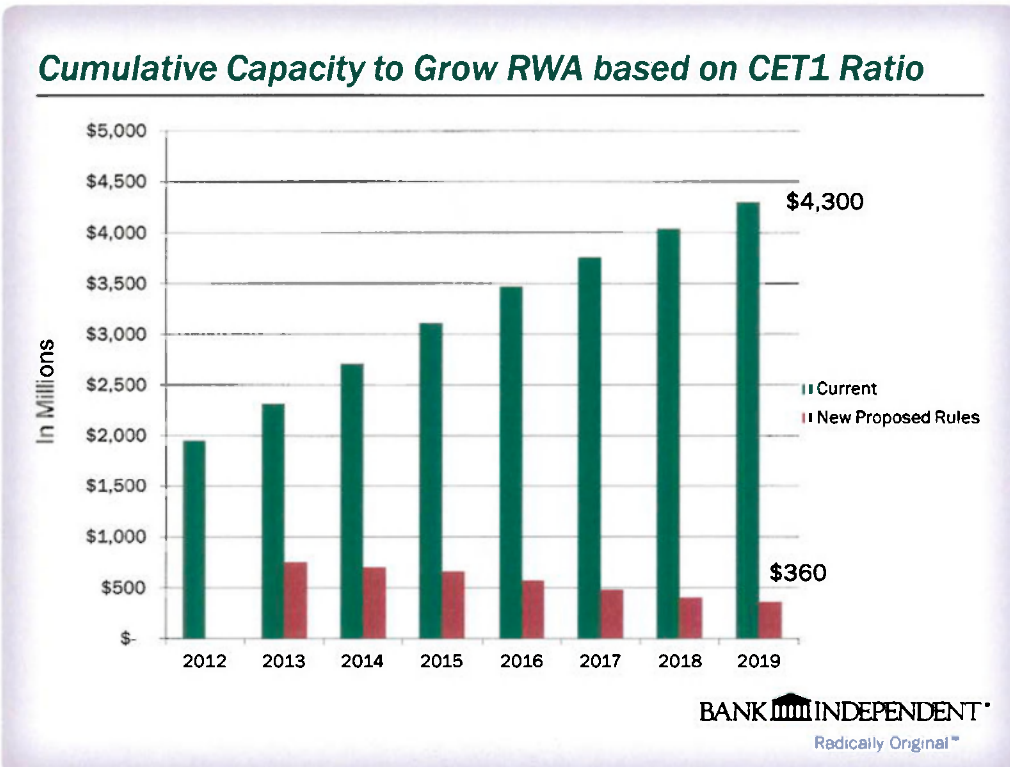
In summary, retroactively analyzing the application of the new proposed capital rules:

1. $500 Million of loans would have been taken out of our community.
2. The FDIC Insurance Fund would have taken an additional $375 million in losses.
3. The FDIC Insurance Fund would have still taken a majority of the $400 million loss (in the aforementioned 2012 bank failure).

Impact to BancIndependent of proposed new capital rules

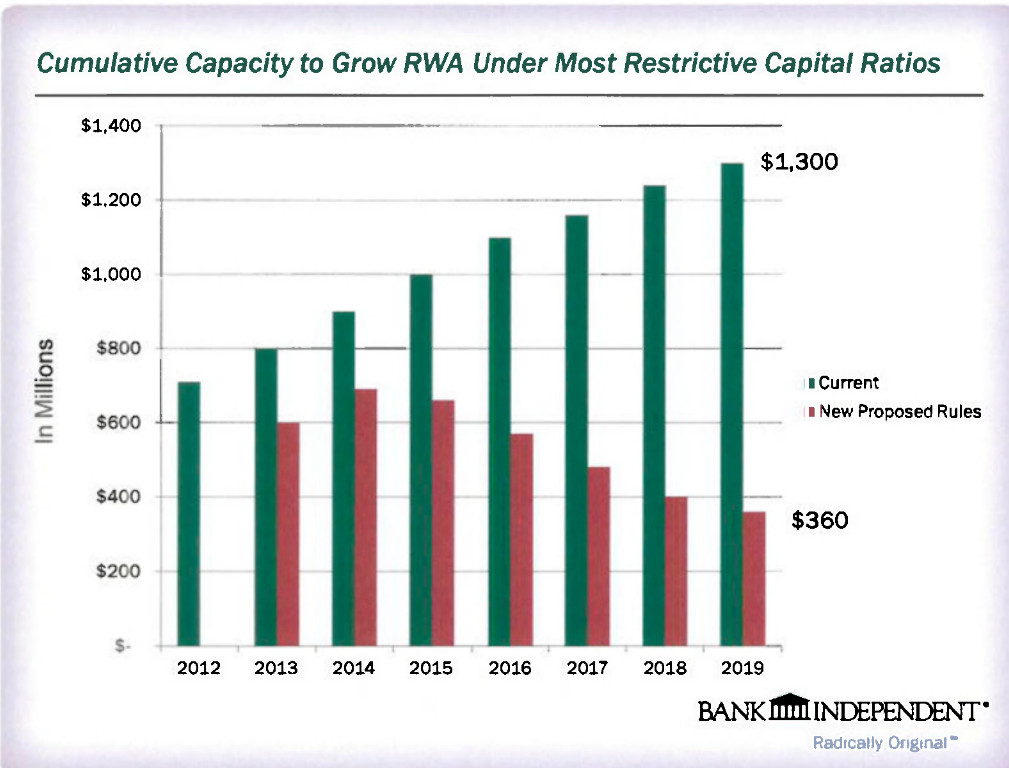
The most significant negative impact the new proposed capital rules will have on BancIndependent will be the large reduction in the bank's capacity to lend. If the new rules were implemented today as they will be fully phased in, we would be required to SHRINK our Risk Weighted Assets by at least $300 million. While we appreciate the phase in of some of the rules, the eventual negative impact is the same. Instead of having the ability to use the bank's retained earnings to reinvest in our communities (as we have demonstrated in the past), we will be required to use our retained earnings to meet the much elevated minimum capital ratios, with a narrower definition of capital in the numerator of the ratio with inflated risk-weighted assets in the denominator.

Just looking at the new CET1 Ratio, a Basel II minimum Ratio of 2% would have given the bank the capacity to grow risk-weighted assets $4.3 Billion over the next 7 years. With a minimum CET1 Ratio at 7%, that capacity is reduced by 92% from $4.3 Billion to $360 Million



That is a very significant negative impact not only to the bank but more importantly to the communities we serve.

We understand there are two other risk based ratios at play with the Tier 1 Risk Based Capital Ratio and the Total Risk Based Capital Ratio that under the current rules are more restrictive than the Basel II CET1 Ratio of 2%. Presently, the most restrictive of all the capital ratios would still give us the ability to grow Risk Weighted Assets by $1.3 Billion. Again, the new proposed capital rules reduce that capacity by 72% from $1.3 Billion to $360 Million.



A portion of Bank Independent's capital is from Trust Preferred Securities and SBLF Preferred Stock issued by BancIndependent down streamed to the bank. BancIndependent's CET1 Ratio is 5.3% including the new risk weighted asset rules while the bank's CET1 Ratio is over 13%. Given the regulator's current authority to restrict distributions from the bank to the Holding Company, we consider the preferred capital down streamed to Bank Independent is effectively fully loss absorbing common equity. Therefore the CET1 minimum ratio applied to BancIndependent, the Holding Company adds no additional protection.

Banks with a similar capital structure to ours will likely be encouraged to move capital back to their Holding Company as the capital serves no added value to the bank. The reduction of capital at these banks will actually increase risk to the FDIC Insurance Fund.

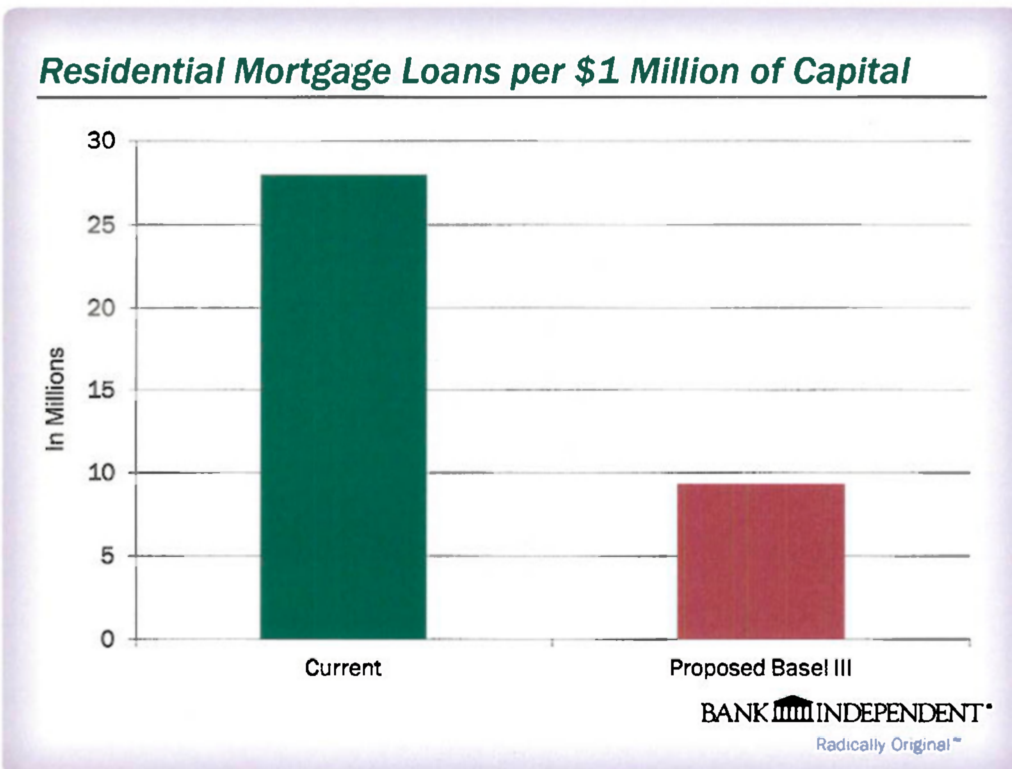
Our position is, while the CET1 minimum ratio of 7% may aid in protecting our economy from a systemic risk from the "too big to fail" banks, it is extremely onerous to community banks and the communities they serve. While the CET1 minimum ratio may be a useful minimum to Bank subsidiaries of Holding Companies, applying the CET1 minimum ratio to Holding Companies adds very little value of protection. We believe Community Bank Holding Companies should be exempt from the CET1 minimum ratio minimums.

Trust Preferred Securities as Tier 1 Capital

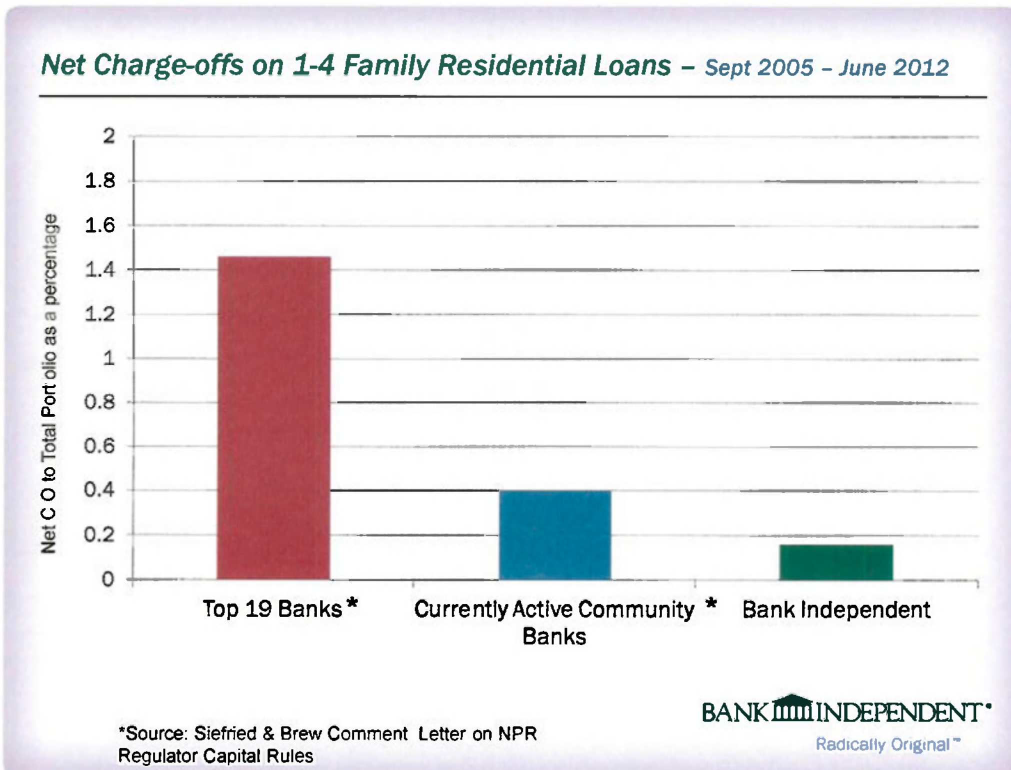
We appreciate and understand how Trust Preferred Securities (TRUPS) with their inclusion as Regulatory Tier 1 Capital leveraged high risk bank business models (high concentration of high risk loans funded with "hot money") and played a part in the role of many bank failures. It is a prescription for failure that is well chronicled. However, like BancIndependent, there are many banks that issued TRUPS who successfully managed the growth provided by TRUPS capital injection into their banks. Our acquisition of 17 branches with $375 million of deposits in 2005 was mostly financed with a $30 million capital injection into the bank through the issuance of TRUPS. It was a regulatory approved capital structure that significantly strengthened the bank. We cannot unwind that strategic acquisition decision with the proposed phase-out of existing TRUPS from Tier 1 Capital without weakening our bank and/or significantly withdrawing lending capacity from our communities. Our position is that existing TRUPS are no longer a toxic fuel for uncontrolled growth as most community banks who mismanaged growth with TRUPS have failed. Those who successfully managed growth with TRUPS have survived. It would be unfairly punitive to the successfully managed banks to now change the rules. While we see the legitimacy of excluding future issuances of TRUPS from Tier 1 Capital, we believe that grandfathering community bank's existing TRUPS to not be phased out from Tier 1 Capital would be fair to those community banks who made strategic decisions with the capital injection of TRUPS. The Collins amendment to Dodd-Frank clearly intended for financial institutions under $15 billion to be exempt from the requirement to phase out TRUPS from Tier 1 Capital.

Residential Mortgage Lending and the proposed new Risk Weightings

As a result of the proposed new risk weightings, it is our estimate that Bank Independent's risk weighted assets will increase nearly 25% from currently $850 million to over $1.07 billion. The largest immediate increase in the bank's risk weighted assets will be in 1 – 4 Family Residential Real Estate Mortgages. To protect the bank from interest rate risk, the bank includes a balloon feature (typically 5 years) to these loans. Under the proposed new risk weightings, these loans would require the bank to use as much as three times the capital as the loans currently use. Currently, for every $1 million of capital, we could lend $27 million to families. Under the new rules, that amount will be reduced by 67% from $27 million to $9 million.



The additional risk weighting does not correspond with community bank net charge-offs nor does it correspond to Bank Independent's history of net charge-offs. While the increased risk weightings may address problems at the larger banks, community banks more conservative underwriting practices kept 1 -4 Family Residential Real Estate losses as much as four times less than large banks and much less than other community bank loans. Over the past seven years, while large banks had nearly 1.5% net losses in their 1-4 Family Residential Real Estate loans, Community Banks had 0.4% net losses and Bank Independent had even lower losses at 0.16%.



The loss history at Community Banks and Bank Independent does not line up with the proposed risk weightings.

<u>Proposed rules counter to other economic policy and programs promoting growth</u>

There is no question the new proposed capital rules will withdraw credit from communities during a time when the Federal Reserve's policy is to promote growth. The new proposed rules and the Federal Reserve's policy seem to serve cross purposes. Also, capital in the form of the Small Business Lending Fund (SBLF) has been introduced into the system to promote growth. We issued $30 million of SBLF Preferred Stock and have grown our Small Business Loans $62 million with this capital.

Capital withdrawn from the system

Under the current capital rules, the bank has the capacity to grow risk weighted assets. We constantly evaluate strategic options weighing organic growth against acquisition growth. We have proven an ability to successfully manage both options. However, Basel III will likely take the acquisition growth option out of our strategy. Each new regulation has introduced a challenge for smaller community banks to survive. Today we have the capacity to absorb banks within our footprint should they seek an exit strategy. Capital will effectively be withdrawn from the system under the new rules as the new rules significantly will reduce the number of potential acquirers of stressed banks. Stressed banks will eventually become troubled banks which will likely end up in the hands of the FDIC.

Increased cost of reporting and compliance

Much time and resources were required just to estimate the impact of Basel III to Bank Independent. We fear this foreshadows the burden the new proposed rules will place on community banks if the new rules are implemented as proposed. We envision significant increases in software development costs, programming staff, accounting staff, cost of new appraisals, audit fees, legal and professional fees, training expenses and other management and operating expenses. Just the introduction of the possibility of the new rules has already had a significant impact on the bank's strategic planning with time and energy taken away from managing the bank to trying to understand the complexity of the new rules. Over the past few years, there has been a wave of new rules and regulations that has overwhelmed many community banks. These new capital rules appear to be a tsunami.

In conclusion, we believe the large international bank problems were related to the high risk complex business models they employed. We understand the need for elevated capital levels for those banks and their related high risk business models. Most community bank failures were also the result of a higher risk business model and a result of poor management. The community bank failures were not from a lack of capital or from a lack of regulatory authority. Additional capital may have minimally reduced losses to the FDIC Insurance Fund, but would not have prevented failure. Additional capital for a conservative community bank business model with proper regulatory supervision under current regulations will add no additional protection from future losses. Therefore, we ask for community banks to be exempted from Basel III.

In the event a community bank exemption from Basel III is not possible, then we ask that the following changes to Basel III apply to community banks:

1. Exclude community bank holding companies from the CET1 minimum ratio of 7% or reduce the minimum CET1 Ratio from 7% to 4.5% (including the capital conservation buffer);
2. Continue to include TRUPS as Tier 1 Capital as allowed under the Dodd-Frank Act by allowing for the grandfathering of existing TRUPS; and
3. Retain the current risk weighting for residential real estate mortgages.

Once again, thank you very much for the opportunity to comment on the agencies' proposals and we look forward to participating in a solution that will strengthen banks and strengthen our communities. If there any questions or requests for additional information, you are welcome to contact me at the number, email or mailing address below.

Sincerely,

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United States Senator Jeff Sessions
United States Congressman Robert B. Aderholt
Mr. Dennis Lockhart, CEO/President, The Federal Reserve Bank of Atlanta
Mr. John Harrison, Superintendent, State of Alabama Banking Department