Bank of Commerce

November 13, 2008

Robert E. Feldman, Executive Director
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attention: Comments/RIN 3064-AD35

RE: Notice of Proposed Rulemaking and Request for Comment
Revision of Deposit Insurance Assessment Rates

Dear Mr. Feldman:

The Federal Deposit Insurance Corporation has issued a notice of proposed rulemaking and request for comments with respect to the revision of the deposit insurance assessment rate system. This letter sets forth Bank of Commerce's agreement with the comments of the Federal Home Loan Bank of Topeka on the Proposed Rule sent to you and dated November 5, 2008 and is intended to reinforce those comments. Thank you for the opportunity to comment on this important matter.

The management of Bank of Commerce has serious concerns about the Proposed Rule and the unintended consequences that may result from it.

It is clear that the nature of the current credit crisis has caused the federal government to intervene in financial markets in ways never before seen. Some of those interventions have potentially affected the Deposit Insurance Fund:

- Increase of the Insured Deposit Limit to $250,000. On October 3, 2008, the Emergency Economic Stabilization Act (EESA) became law and immediately raised deposit insurance coverage limits from $100,000 to $250,000. This increase in coverage is scheduled to expire on December 31, 2009.

- Temporary Liquidity Guarantee Program. Treasury Secretary Paulson, in consultation with President Bush and upon the recommendation of the boards of the FDIC and the Federal Reserve, invoked the FDIC's systemic risk authority under the FDIC Improvement Act of 1991. Relying on this emergency authority, the FDIC on October 14, 2008 announced its Temporary Liquidity Guarantee Program, pursuant to which the FDIC would:
    - lift the limit on deposit insurance for non-interest bearing transaction deposit accounts, until December 31, 2009, and

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- guarantee certain unsecured debt of participating financial institutions issued after October 8, 2008 and before June 30, 2009.

The analysis on which the FDIC based the Proposed Rule did not contemplate any of the massive new policy programs designed to reduce the risk of depository institution failures. It would be an understatement to say that these policy shifts should have a bearing on any Proposed Rule. Simply put, the proposal was designed for a deposit insurance world that no longer exists.

This, of course, is through no fault of the FDIC. The Proposed Rule was approved a week prior to the emergency establishment of the Temporary Liquidity Guarantee Program. In addition, the EESA legislation itself expressly prohibited the FDIC from raising assessments in response to the deposit insurance limit increase.

We strongly urge the FDIC to withdraw the Proposed Rule and to delay increasing assessment rates and to delay overhauling the assessment system until the end of 2009, after the fates of these three temporary programs are decided. This would permit Congress and other policymakers to consider changes to premiums within the context of a comprehensive review of the deposit insurance system. In addition, such a delay would help avoid a countercyclical increase in depository institution operating costs during the immediate crisis, consistent with both the implicit message of Congress set forth in the EESA legislation and the current discussions regarding an additional economic stimulus package.

In the event that the FDIC does not withdraw the Proposed Rule, Bank of Commerce supports FHLBank Topeka recommendations, as outlined below:

- Extend the Restoration Period to Ten Years. The FDIC should use its "extraordinary circumstances" authority to extend the time period to rebuild the deposit insurance fund from five years to ten years. This will limit unnecessary stress on insured depository institutions, the communities they serve and the economy as a whole.

- Withdraw the Adjustment for Secured Liabilities. We believe that penalizing institutions that rely on secured debts for part of their funding would disrupt the current business practices of many healthy institutions, at a most inopportune time. Recent events have proven how much more stable and reliable FHLBank advances and certain other forms of secured debt are relative to retail deposit funding, which has been characterized by extreme volatility. This stability of funding is even more important in rural states and communities, like those served by FHLBank Topeka, where disintermediation of deposits and out-migration of population increase community bankers' dependence on secured liabilities to meet their communities' loan needs. In addition, by penalizing on-balance sheet secured debt financing, the Proposed Rule would inadvertently subsidize the resurgence of the "originate-and-sell" model of mortgage finance. Many observers, including from time to time the Chairman of the FDIC, have noted how this model breaks the traditional role of a mortgage lender into separate components, thereby encouraging riskier underwriting at origination and complicating credit workout strategies on the back end because the originating financial institution has "no skin in the game." The Proposed Rule did not consider the potential effect this shift would have on systemic risk and the likelihood of additional depository institution failures. For these reasons, if the current rulemaking continues, we ask that the final rule remove the proposed upward adjustment in assessment rates for institutions that rely on secured liabilities.

- No Penalty for FHLBank Advances. If the FDIC does proceed with an upward rate adjustment for secured liabilities, we believe that FHLBank advances should be treated more favorably than certain other forms of secured liabilities. The FHLBanks are unique providers of secured funding, cooperatives devoted to serving the needs of their stockholder-customers, and as a result, advances typically are priced with very narrow spreads over the FHLBanks' cost of funds. In addition, their unique structure ensures that most of the earnings from the making of advances are promptly returned to the banking and housing systems, in the form of dividends and required contributions to each FHLBank's Affordable Housing Program. Finally, we believe that the reliability of advances as both a source of liquidity to and an effective asset-liability risk management tool for depository institutions has been proven over the last 15 months as the FHLBank system has stepped in to fill the liquidity void. FHLBank Topeka firmly believes that the number of institution failures would have been much higher (and costlier to the FDIC) in the absence of the FHLBank system.

Bank of Commerce urges the FDIC not use the deposit insurance assessment process to impose new barriers to liquidity – liquidity the financial system desperately needs.

Thank you for your consideration.

J. L. Miller
President & CEO
Bank of Commerce