BankUnited
Banking For Locals, By Locals℠

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August 5, 2009

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: **Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions**

Dear Mr. Feldman:

I am writing to comment on the FDIC's recently proposed policy statement on private capital investment in banking organizations. I am the Chairman, President and Chief Executive Officer of BankUnited. BankUnited is an FDIC-insured institution with eighty-five branches located throughout Florida.

Earlier this year, I led the new management team that brought BankUnited out of FDIC receivership after its predecessor institution had failed. As part of our transaction, several private equity funds invested close to $1 billion of new capital in BankUnited. BankUnited is now one of the strongest banking institutions in the country. I was pleased to learn of Chairman Bair's recent public statements in support of our transaction.

I wholly support the objective of the proposed policy statement: to ensure that banking institutions are run in a prudent manner with sufficient financial strength. This objective is important to protect customers, the Deposit Insurance Fund, and ultimately taxpayers. However, I am concerned that the proposed policy statement would have an unintended and opposite effect. I offer some more specific observations and suggestions below.

The focus should be on the strength of each institution and its management

The proposed policy statement would impose considerable new requirements for some – but not all – institutions that seek to participate with the FDIC in resolving a failed bank. Whether these requirements would apply to a particular institution is not based on its financial health, the quality or experience of its management, or the nature of its business.

Rather, the requirements of the policy statement would apply to an institution based solely on whether its shareholders include one or more "private capital investors."

The result of this approach is that a strong institution with private capital investors would be held to a much higher standard than a weak institution without private capital investors. Furthermore, the policy statement would raise the bar so high for institutions with private capital investors, that those institutions would likely choose not to participate with the FDIC in the resolution of failed banks.

The proposed policy statement would have the effect of either preventing strong bidders from participating in FDIC auctions or unnecessarily affecting the terms of their bids to the detriment of the FDIC. For example, the proposed policy statement would likely have precluded our bid for BankUnited – even though our proposal was led by a proven management team, provided almost $1 billion of new capital to the banking industry, and presented the terms most favorable to the FDIC.

Whether an institution is a suitable acquirer of a failed bank is not driven by the nature of its shareholders – especially when those shareholders have no ability to exercise control over the institution. Instead, the FDIC and other regulators should evaluate each potential acquirer's strength of management, adequacy of capital, and proposed business plan.

Existing rules require comprehensive regulatory review and provide strong safeguards

Any transactions involving the acquisition of a bank from the FDIC requires prior approval of at least one federal banking regulator. These requirements apply under existing rules – whether or not the proposal involves private capital investors.

For example, our proposal for BankUnited was approved by both the FDIC and the Office of Thrift Supervision. Over the course of three months, our management team and investors submitted volumes of detailed information on our background, qualifications, organizational structures, amounts and sources of capital, business plans, and financial projections. The regulators' review was professional and thorough. This approval process provides the FDIC and other regulators with a formal and well understood mechanism by which to vet each proposal (including those with private capital investors) on a case-by-case basis.

Capital requirements should be based on an institution's facts and circumstances

The proposed policy statement would require any institution with private capital investors to have a Tier 1 leverage ratio of at least 15 percent before it could qualify to acquire a failed bank. This new requirement would be three times higher than the minimum for an existing institution and two times higher than the typical minimum for a newly formed startup institution.

I am concerned that such a dramatic increase in capital requirements would have unintended and negative results. Faced with the possibility of dramatically higher costs of capital, institutions would be disincentivized to raise capital from private investors. And institutions subject to the higher requirements would have less capacity to lend to individuals and business in their communities.

Finally, otherwise suitable acquirers would be shut out of FDIC resolution transactions. For example, BankUnited is by any measure one of the best capitalized institutions in the country. Yet because its shareholders include private capital investors, BankUnited would need to almost double its capital levels in order to acquire a failed bank from the FDIC. This would be true even if the failed bank to be acquired were just a tiny fraction of the size of BankUnited.

Capital is one of the most effective protections for a bank in a difficult economy. It has become clear over the past eighteen months that many institutions in this country have insufficient capital. But rather than impose an across-the-board increase with respect to every institution with private capital investors, the FDIC and other bank regulators should determine the appropriate capital level for an institution as part of the prior approval and ongoing supervisory process.

The expansion of cross-guarantee liability would have serious unintended consequences.

The proposed policy statement would create a new form of cross-guarantee liability when a group of private capital investors collectively own a majority of two or more institutions. Those investors would be required to pledge to the FDIC their ownership interest in one institution in order to pay for losses to the FDIC in the event that the other institution failed.

This new requirement would have serious consequences for the affected private capital investors. But more important from my perspective, this new type of cross-guarantee liability would have serious adverse consequences for institutions and shareholders that bear no responsibility for – and have no relationship – with the failed institution. Through no fault of its own, an institution could find itself majority owned by the FDIC. It is unclear what the FDIC would then do with that ownership. That uncertainty would hurt the value of the remaining shareholders of the healthy institution.

The proposed policy should not apply retroactively.

As currently drafted, the proposed policy statement would be triggered by transactions with private capital investors that occurred in the past three years. Applying new requirements to past transactions would be unfair not only to the private capital investors – but also to the institutions in which they invested.

This unfairness is particularly acute in the case of BankUnited. Our business plan, which was reviewed and approved by the FDIC, expressly contemplates growth through the

acquisition of troubled or failed banks. Indeed, we raised substantial excess capital for that purpose. The new requirements of the proposed policy statement could prevent us from efficiently deploying that capital. We respectfully request that the new policy statement be applied only with respect to transactions conducted after its adoption.

I would like to respectfully remind those who will eventually promulgate the final rules involving this matter and repeat that no bank that I'm aware of has failed in this country because of where their capital came from. Rather, banks continue to falter and ultimately fail because of poorly conceived business plans executed by sub-standard management teams. The FDIC has within its power today the ability to hold all future bank managers to a higher standard. Frankly, as a bank manager of a highly successful institution for nearly forty years, I believe to do so would be in the best interest of the entire industry and in keeping with the standard of safety and soundness we would all appreciate.

We thank the FDIC for its hard work on this important subject matter and for this opportunity to offer our suggestions. I am available to discuss any aspects of this letter or the proposed policy statement. Please do not hesitate to call.

Sincerely,

John Adam Kanas
Chairman, President and Chief Executive Officer
BankUnited