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July 1, 2010

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
Attention: Comments
550 17th Street, N.W.
Washington, DC 20429
Comments@FDIC.gov.

Re: PROPOSED RULE REGARDING ASSESSMENT SYSTEM APPLICABLE TO LARGE INSTITUTIONS;
Part 327 FDIC Regulations
RIN #3064-AD57

Dear Secretary Feldman:

This letter is submitted by TCF Financial Corporation on behalf of its affiliate, TCF National Bank ("TCF"), in response to the Notice of proposed rulemaking and request for comment regarding assessment system revisions applicable to large institutions, published in the Federal Register on May 3, 2010 at 75 FR 23516 (the "Proposed Rule"). TCF is a Wayzata, Minnesota-based national financial holding company with $18.2 billion in total assets. TCF has 441 banking offices in Minnesota, Illinois, Michigan, Colorado, Wisconsin, Indiana, Arizona, and South Dakota, providing retail and commercial banking services. TCF also conducts commercial leasing and equipment finance business in all 50 states and commercial inventory finance business in the U.S. and Canada. This letter will address the FDIC proposed rule and request for comment to revise the assessment system applicable to large institutions. TCF appreciates the opportunity to comment and respectfully requests that the FDIC consider the suggestions set forth herein.

The Board is proposing a new assessment calculation formula for large institutions, with assets of $10 billion or more, which makes significant changes to its current risk-based assessment system. The amendments are intended to better measure the risk posed by large institutions to the Deposit Insurance Fund (the "Fund"). The proposal provides a methodology that makes use of information on how institutions would perform in times of stress and adjusts the assessment calculations accordingly. The Proposed Rule adjusts the current assessment range for all insured institutions to ensure that the income the FDIC derives from insurance assessments is approximately equal to what it now receives under the current assessment formula. Congress is currently debating the proposed Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Financial Reform Bill") that changes the application to apply to an asset base.

We have significant concerns with certain aspects of the Proposed Rule. A healthy banking system is a critical component of the U.S. and global economies. For certain healthy and strong performing institutions, such as TCF, the assessments would increase. The revised assessment system would negatively impact the ability of TCF and similar financial institutions to make certain loans or to offer loan modifications to existing borrowers who cannot make their current payments.

General Comments:

1. Consider Delaying the Comment Period and the Effective Date of the Proposed Rule.

   The Proposed Rule was issued for comment on May 3, 2010, after extensive work by the FDIC and other contributors. Comments to the Proposed Rule are due by July 2, 2010. Congress is currently debating the Financial Reform Bill. This bill would drastically change the way the financial industry is structured and how financial institutions are regulated. Included in the proposed Financial Reform Bill is a provision that changes the FDIC insurance assessment formula using a risk-based calculation to apply to assets, instead of the current assessment calculation that is applied to deposits.

   In addition, the Financial Accounting Standards Board ("FASB") has issued an exposure draft that will significantly revise accounting standards for banking institutions. Under the exposure draft, most of a bank's balance sheet will be required to be recorded at fair market value. The revisions could radically change how investors and customers view banking institutions.

   We believe that the Proposed Rule is premature. The FDIC should consider either withdrawing the Proposed Rule, or indefinitely extending the Comment Period for the Proposed Rule, until Congress has taken action on the proposed legislation and FASB has taken action on its exposure draft. Moving forward with the rulemaking process would involve unnecessary time and effort, and would be superseded by any legislation that is enacted.

2. Consider changing the calculation in the Proposed Rule to an Asset-Based formula.

   We are in support of the current proposed legislation that would change the assessment calculation to apply to assets, instead of deposits. We believe that this change would help even the playing field among financial institutions. Several large financial institutions were unregulated and contributed to the current economic crisis through imprudent lending and documentation standards. Many of these institutions are now banks and have received support from the U.S. government under the TARP. These institutions pose a larger risk to the Fund, but pay a much lower assessment, since the assessment calculation is currently only applied to deposits, rather than total assets. We believe that brokered deposits, however, do present a higher level of risk, and we support the treatment of brokered deposits in the Proposed Rule, although we believe the risk rating for this activity should be even higher than what was proposed.

3. Change the Source of Information used in the Calculations of the Proposed Rule.

   The Proposed Rule uses data that the FDIC would obtain from the Call Report or from the primary regulator, if the information is not reported on the Call Report. For instance, criticized and classified loan reporting and nearly all the measures used in the high-risk

concentration calculation are examples of information obtained by the FDIC from the primary regulator. We believe that information provided by the primary regulator could be subject to error, inconsistency, and subjective interpretation. This contrasts with the rigorous controls that TCF and other FDIC insured banks are required to follow as required by various provisions of the Sarbanes-Oxley Act (the "SOX Act"). The SOX Act imposes a requirement that the CEO, CFO and Controller of a public company certify the accuracy of data that is contained in the company's financial reports and that the data is calculated in accordance with established federal accounting standards. The Call Report is subject to the SOX Act requirements.

Banks are required to adhere to the SOX Act requirements, as well as FDIC requirements, by establishing proper controls, including policies and procedures, to ensure that the data contained in these financial reports is true and accurate. No such controls may be in place to ensure the accuracy or consistency of data obtained through other non-direct sources. The Proposed Rule should be changed to provide that the data and information used in the assessment calculations are derived from the bank's Call Report or obtained directly from the bank itself.

Specific Comments:

The FDIC seeks comment on a list of specific questions about the Proposed Rule. Following are our comments on certain of these questions.

1. Deposit Insurance Pricing System:

Question 1(d): Should the risk measures, particularly the components of the high risk concentrations measure, be defined as proposed?

Comment: *The calculation for a bank's ability to withstand asset stress does not risk-weight the various classes of loans that are delinquent. For example, a 30-day delinquent loan is treated the same as a non-accrual loan. In addition, secured loans pose less risk to the Fund than unsecured loans. The various classes of delinquent loans should be risk-weighted based on actual risk to the Fund (e.g. 30-day delinquent loans should be scored differently than non-accrual or classified loans and unsecured loans should be scored differently than secured loans).*

Current regulatory accounting rules require losses to be recorded immediately on residential real estate loans that are classified as non-accrual or where the borrower has declared bankruptcy. These rules reduce the risk of loss to the Fund compared to other types of secured loans.

2. Performance Scorecard:

Question 2(c): Should any other measures be added? Should any measures be removed or replaced?

Comment: *The calculation for a bank's ability to withstand asset stress includes 1-4 family real estate loans that have been modified or restructured, regardless of whether the loans are current or not. The classes of loans*

should take into account the current payment status of the loans, which would be a more accurate indicator of risk instead of just considering whether or not the loan has been modified. The fact that these loans are included in a bank's underperforming assets for FDIC insurance purposes could cause the bank to commence foreclosure action instead of modifying a loan in a manner that allows the borrower to remain in the property with affordable loan payments. It is good for the economy, the banking industry, and our communities to have the flexibility to temporarily modify loans to otherwise creditworthy borrowers when the borrowers have the ability and willingness to service the debt.

Comment: *The new formula uses core earnings divided by total average assets in the calculation for the bank's ability to withstand asset stress. One of the goals of the new assessment formula was to move away from a calculation that was tied to the cyclicality of a bank's earnings since banks' earnings are impacted by current macroeconomic factors. Using this factor in the calculation results in a bank's assessment being determined by outside economic factors, rather than on the amount of risk the bank poses to the Fund due to factors that are within the control of the bank itself, such as the bank's activities and financial position. This would be further exacerbated by the proposed FASB accounting exposure draft where loans would be required to be marked to market, since the proposed definition of "core earnings" in the Proposed Rule includes changes in a loan's fair market value.*

Comment: *The new proposed formula includes a score based on criticized and classified loans and unfunded commitments. A bank receives credit only for the "allowance for loan and lease losses". The Proposed Rule should allow credit for reserves on unfunded commitments reported in the "other liabilities" section of a bank's Call Report.*

Comment: *The "unfunded commitments/total assets" calculation assumes all unfunded commitments will fund, thus creating risk. This is not always the case - in many instances an initial unfunded commitment will be reduced or canceled. TCF monitors the level of funded to total commitments on lines of credit and even during the latest financial crisis, this percentage did not increase on average. The FDIC should consider a way to adjust the calculation to avoid this false assumption on funding of commitments.*

Question 2(g): Should the liquidity coverage ratio be computed as proposed?

Comment: *The Proposed Rule uses information from the Call Report to calculate "liquid assets/short term liabilities". This line of the Call Report includes federal funds purchased and repurchase agreements that have both long-term and short-term maturities. As a result, the assessment calculation would include both short- and long-term liabilities. The Proposed Rule should exclude long-term federal funds purchased and repurchase agreements from this short-term liquidity calculation.*

Question 2(h): Are the outlier add-ons appropriate measures? Is the score addition for add-ons appropriate?

Comment: *The outlier add-ons should be applied on a tiered basis instead of being cliff- based. The current proposal would penalize an institution that exceeded a risk percentage threshold by a few points to the same degree as an institution that exceeded the risk percentage threshold by a significant amount, even though the second institution may pose a much higher level of risk than the first institution. Institutions that are close to the outlier threshold may be forced to take quick action to avoid the outlier add-on penalty without having time to properly evaluate the potential effects of their action on other activities of the bank as a whole. These institutions would not have the opportunity to methodically evaluate alternative options for effectively reducing risk without negatively impacting the safety and soundness of the institution. Also, the outlier add-ons penalize institutions that have any collateral as security that may take time to resolve, such as residential real estate which poses smaller risk to the Fund. Risk differentiations as noted in our comment to Question 1(d) above should be considered in a tiered outlier add-on formula.*

3. Loss Severity Scorecard:

Question 3(a): Are asset haircuts, runoff, and secured liability assumptions for the loss severity measure as described in Appendix D appropriate?

Comment: *As part of the projected loss calculation under the asset recovery test in the loss severity measure, the Proposed Rule uses average FDIC historical data to calculate asset recovery. There is a wide variation in the amount of time, money, and effort that banks may devote to asset recovery efforts. Banks vary substantially in their ability to structure successful recoveries. One bank may devote many resources to this effort, while another bank may decide to devote its efforts instead to producing more assets. Thus, the FDIC's proposed prediction of asset recovery using average historical data is far less accurate as a predictor of loss on well secured banks or on banks in various regions of the United States.*

Also, the FDIC averages do not consider key measures of loss, such as loan-to-value ratios, which vary greatly among banks. The use of the proposed FDIC averages in this calculation is very misleading. TCF would not grow to the size contemplated by the formula nor would it experience losses as great as provided in the formula.

Question 3(d): Are cut-off values for risk measures and outlier add-ons appropriate?

Comment: *Our response here is similar to our comment on Question 2(h). The outlier add-ons should be applied on a tiered basis instead of being cliff-based. The current proposal would penalize an institution that exceeded a risk percentage threshold by a few points to the same degree as an*

institution that exceeded the risk percentage threshold by a significant amount, even though the second institution may pose a much higher level of risk than the first institution. Institutions that are close to the outlier threshold may be forced to take quick action to avoid the outlier add-on penalty without having time to properly evaluate the potential effects of their action on other activities of the bank as a whole. These institutions would not have the opportunity to methodically evaluate alternative options for effectively reducing risk without negatively impacting the safety and soundness of the institution.

Question 3(e): Should any other measures be added? Should any measures be removed or replaced?

Comment: *The Proposed Rule calculates potential losses by taking projected assets available to cover insured depositors and multiplying that number by a percentage, using the ratio of insured depositors to total depositors. The application of this calculation results in assumed payment from the Fund to a percentage of uninsured depositors and/or unsecured creditors, who are not entitled to any FDIC insurance protection and who the Fund is not required to protect. This in turn results in an overstated FDIC loss. The calculation formula should be revised to eliminate any payments to persons or entities not covered by the FDIC's insurance protection.*

4. Regulatory Matters:

Question 5(b): Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?

Comment: *The Proposed Rule does not specify how often the values used to calculate the asset recovery and run off rates are going to be updated. Current macroeconomic conditions will dramatically impact a failed bank's ability to recover assets. If the calculation utilizes data that is not updated, the results may not accurately reflect current market conditions.*

Comment: *The Proposed Rule relating to the criticized and classified asset calculations under the asset stress test indicates that the calculation includes securities that are rated sub-investment grade or worse or have an internal rating of special mention but isn't specific about whether non-rated securities should be included. This should be clarified.*

Question 5(c): Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?

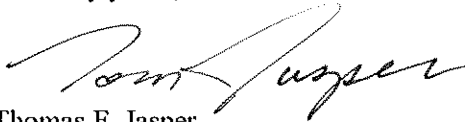
Comment: *The FDIC's proposed formula utilizes sub-prime consumer lending as one of the categories. The proposed definition of "sub-prime" is vague and requires further clarification. For example, is "sub-prime" defined to include loans where the principal borrower has a FICO score lower than a specified score? Is the score used in the calculation the current FICO score updated on a quarterly basis or is it the FICO score of the borrower as of the origination or purchase of the loan? If a low FICO*

score is treated as "sub-prime" when the loan was not underwritten in a "subprime program" and it had a low loan-to-value ratio and a reasonable debt-to-income ratio, would it be treated as a "sub-prime" loan?

Comment: *The definition of "merger" as used in the Proposed Rule for growth adjustment calculations should distinguish between mergers of bank charters vs. acquisitions of all or part of a portfolio. In bank mergers, the historical payments to the Fund by the acquired bank are not considered in the proposed calculation of a bank's ability to withstand asset related stress growth adjusted portfolio concentration measure that treats mergers as asset growth (high growth is treated as higher risk to the Fund).*

If you have any questions or would like to discuss any of the issues raised in this letter, please contact me at 952-475-6476.

Sincerely yours,



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