



September 19, 2012

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

RE: FDIC Basel III NPR (RIN 3064-AD95)

Dear Mr. Feldman:

As a banking consultant whose client base includes over 20 community banks that have elected S Corporation status, I would like to point out a provision of the Basel III NPR that would create a very uneven playing field for S Corporation financial institutions.

In the Capital Conservation Buffer and Maximum Payout Ratio section of the Basel III NPR, there is no provision addressing tax distributions to shareholders of S Corporations. The definition of Eligible Retained Income needs to be modified to allow for shareholder tax distributions (perhaps up to the level of corporate taxes that would have been paid had the entity not elected a pass-through tax status) prior to the imposition of a Maximum Payout Ratio. Failing to make this adjustment results in a disparate impact on institutions that have made a pass-through election and would likely result in the termination of the S Corporation election by financial institutions that fall under a payout restriction.

Allowing a shareholder distribution up to the amount that would have been paid by a similar C Corporation would place all institutions on a level playing field (and result in equal levels of retained earnings for similarly situated S and C institutions) without weakening the intent of the Basel III NPR. Failing to make this technical correction would unfairly impact the nation's 2,300 S Corporation financial institutions (over 31% of all institutions as of March 31, 2012).

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Jefferson Fair', with a long horizontal flourish extending to the right.

T. Jefferson Fair  
President