EnerBankUSA

SALT LAKE CITY, UTAH • RALEIGH, NORTH CAROLINA

October 22, 2012

Via E-Mail (regs.comments@federalreserve.gov, comments@fdic.gov, comments@occ.treas.gov)

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation,
550 17th Street, N.W.
Washington, D.C. 20429

Re: Basel III Capital Proposals

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Basel III proposals[1] that were recently approved by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, "Banking Agencies").

EnerBank USA is an industrial bank that specializes in providing unsecured home improvement loan programs for homeowners through nationwide dealer networks of leading home improvement manufacturers, distributors, and franchisors, as well as through home improvement contractors and retailers. Headquartered in Salt Lake City, Utah, EnerBank USA has approximately $550 million in assets.

We are commenting because we specifically disagree with the proposed methodology put forth by the Banking Agencies to incorporate a new approach for certain risk-weighted assets and deferred tax assets ("DTAs"). We see the following problems in the proposals:

- **The proposed risk-weighting approach will adversely impact consumers**

The proposal would apply a 20% risk-weight to non-revocable loan commitments. All of our loans are consumer loans, and all of our loan commitments are non-revocable. The way our process works is that home improvement contractors refer their customers to us to apply for a loan. Customers apply for a

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[1] The proposals are titled: *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, and Transition Provisions; Regulatory Capital Rules: Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure Requirements; and Regulatory Capital Rules: Advanced Approaches Risk-based Capital Rules; Market Risk Capital Rule.*

Providing excellence in un-secured home improvement loan programs

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loan with us before they start a home improvement project. Once approved, both the consumer and the home improvement contractor know that the consumer has a way to pay for the project. Many home improvement contractors do not require a down payment from a consumer if he/she has a loan commitment from our bank.

Under the proposal, EnerBank USA either would have to make our loan commitments revocable or hold additional capital to support these commitments. Neither the consumer nor the home improvement contractor would consider changing the loan commitment to be unconditionally cancellable to be a benefit to them. If we are required to maintain additional capital, then we will have to consider increasing rates and/or fees to offset the cost of the additional capital.

In addition, although the risk weighting of mortgage assets does not directly affect our bank, because we do not make mortgage loans, the proposed risk-weighting approach would also require banks to hold significantly higher capital levels to support mortgage lending. Peer banks in our community tell us that the likely result would be that community banks will reduce their mortgage lending or completely exit the market. Consumers will either have less access to mortgages or they will have to go to less regulated companies to obtain a mortgage.

- **The proposed risk-weighting approach is overly complex**

The existing risk-weighting approach is already fairly complex. The proposed approach is even more complex. The complexity of the new approach would make it very difficult for small and mid-size banks to understand and report accurately. This increased complexity will increase the likelihood of adverse, unintended consequences.

- **Excessive restrictions on DTAs**

The proposed rules disallow DTAs that arise from tax loss carry-forwards or tax credits, which we agree is reasonable. However, amounts that are not disallowed by reason of being equal to or less than 10% of common equity tier 1 capital are subject to a risk-weight of 250%. This is double jeopardy for banks. For most banks the single largest component of DTAs arising from temporary differences is the Allowance for Loan and Lease Losses ("ALLL"). Therefore, a bank reduces capital for its ALLL through the income statement and then has further deductions from capital for the DTAs that arise by virtue of the ALLL.

Proposed solutions

In order to avoid adverse impacts on consumers, we believe that the final rules should not seek to change what works. Specifically, the rules should retain the existing risk-weights on non-revocable loan commitments to consumers. This would increase the strength of the industry, minimize unintended consequences, and prevent unnecessary burdens from being imposed on banks and the Banking Agencies. Regarding the DTAs, we urge you to lower the risk weight to 150% and increase the amount of the ALLL included in Tier 2 capital from 1.25% of gross risk-weighted assets to 1.5%.

Thank you for your consideration.

Sincerely,

/s/ Charles E. Knadler

Charles E. Knadler
Executive Vice President and Chief Financial Officer

cc: Senator Orrin Hatch
Senator Mike Lee
Representative Jim Matheson
Representative Jason Chaffetz
Representative Rob Bishop
Representative Bill Huizenga
Representative Gary Peters