

# WHISTLEBLOWER POLICY

**Approved 3-19-04**

**Revised and approved July 22, 2010**

## **EXECUTIVE SUMMARY**

The First Bancshares, Inc. and its subsidiary, The First, A National Banking Association, (collectively, the “Company”) and their stockholders have a right to expect that the Company’s directors, officers, and employees will conduct the Company’s business in compliance with all applicable laws and the high level of integrity reflected in the Company’s Code of Ethics (the “Code of Ethics”). A primary objective of this compliance is to ensure that the Company will consistently provide public disclosure of its financial performance and its business in a manner that is accurate, complete, fair, timely and understandable.

The Company needs your help ensuring that we can live up to the legal and ethical standards contained in the Code of Ethics. If you have knowledge or a belief that any director, officer or employee is violating, has violated or is attempting to violate any laws applicable to the Company or the Code of Ethics (such as the Reportable Offenses described below), then you should report the relevant information as promptly as practicable using one of the procedures described below under “Reporting Procedures.”

## **OVERVIEW**

The Company is dedicated to fully complying with applicable securities laws, including the reporting requirements under those laws. The Company therefore seeks to ensure that its periodic reports to investors or filings with and submissions to the Securities Exchange Commission (“SEC”) (collectively referred to herein as the “Reports”) contain accurate, complete, fair and timely disclosure concerning the Company. The Reports are intended to reflect the highest-quality, most transparent financial accounting and disclosures which are written in a clear, concise and easily understandable manner. The information contained in the Reports should fairly present, in all material respects, the financial condition, results of operations and cash flows of the Company. An important aid in achieving these goals is the Code of Ethics which was adopted not only to ensure compliance with applicable laws but also to establish standards that transcend those minimum requirements and create a culture of honest and ethical conduct.

Accordingly, the Company is committed to providing an environment which is receptive to receiving, retaining and effectively dealing with complaints regarding (i) accounting and auditing matters, (ii) compliance with Internal Controls (as defined below) for financial reporting and Disclosure Controls and Procedures (as defined below), or (iii) any violations of the securities laws or the Code of Ethics relating to any of the foregoing (“Complaint(s)”). The Company therefore encourages the confidential submission by employees of concern or

Complaints regarding questionable matters relating to any of the foregoing which can be made on an anonymous basis if desired by the employee.

All members of the Board of Directors and the Audit Committee, and all officers and employees, whether supervisory or non-supervisory, are expected to uphold and abide by the Audit Committee Complaint Policy and Procedures for Violation of the Securities Laws or the Code of Ethic Relating to Financial Disclosure Matters Policy (the "Policy") which includes related procedures to implement this Policy.

## **Complaint Procedures**

In order to implement this Policy, the Company, the Board of Directors and the Audit Committee of the Company have established the following procedures which are designed to encourage the prompt reporting of any Complaints or concerns that fall within the scope of this Policy so that rapid and constructive action can be taken to detect and prevent any violation of this Policy.

*Reportable Offenses.* Reportable Offenses include any questionable activity regarding (i) the Company's accounting or auditing matters, (ii) compliance with Internal Controls or Disclosure Controls and Procedures, or (iii) any violation of the securities laws or the Code of Ethics relating to any of the foregoing, including knowledge or a belief, that:

1. Any person is committing or has committed, or is attempting or has attempted to commit, securities fraud, whether or not material;
2. Any person is committing or has committed, or is attempting or has attempted to commit, any other type of fraud, including bank fraud, against the Company, any of the Company's banking or other subsidiaries, or stockholders or depositors, whether or not material;
3. Any person is taking or omitting to take, or has taken or omitted to take, or is attempting or has attempted to take or omit to take, any action leading to the Company's financial statements, or any other aspect of the Reports, containing any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made or are proposed to be made, not misleading;
4. Any person is violating or has violated, or is attempting or has attempted to violate, the Company's accounting rules, Code of Ethics, Internal Controls or Disclosure Controls and Procedures;
5. Any person is violating or has violated, or is attempting or has attempted to violate, applicable securities laws or regulations;
6. Any person has taken or omitted to take, or is taking or omitting to take, or is

attempting or has attempted to take or omit to take, any action to fraudulently influence, coerce, manipulate or mislead any independent public or certified accountant engaged in the performance of the audit of the financial statements of the Company with the purpose or effect of rendering such financial statements materially misleading;

7. Any person is conspiring or has conspired, or is attempting or has attempted to conspire, to commit any of the above acts;

8. Significant Deficiencies (as defined below) or Material Weaknesses (as defined below) exist in the design or operation of Internal Controls or Disclosure Controls and Procedures which could adversely affect the Company's ability to record, process, summarize, and report financial data or other information required to be included in the Reports in a timely manner;

9. Other material Weaknesses or Significant Deficiencies in Internal Controls or Disclosure Controls or Procedures exist;

10. The officer signing or certifying any Report has not reviewed such Report;

11. Any Report contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

12. The financial statements and other financial information included in a Report do not fairly present, in all material respects, the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in such Report;

13. Any officer certifying any Report: (a) has not established or maintained Disclosure Controls and Procedures; (b) has not evaluated the effectiveness of the Company's Disclosure Controls and Procedures as of the time period that is relevant to such Report; (c) has not presented in such Report the officer's actual conclusions about the effectiveness of the Company's Disclosure Controls and Procedures based on the officer's evaluation; or (d) has not disclosed to the Company's auditors and its Audit Committee (or persons fulfilling the equivalent function): (i) Significant Deficiencies or Material Weaknesses in the design or operation of Disclosure Controls and Procedures, which could adversely affect the Company's ability to record, process, summarize or report financial data or other information required to be included in the Reports in a timely manner, (ii) Material Weaknesses or Significant Deficiencies in Internal Controls; or (iii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's Internal Controls;

14. Any officer certifying a Report has failed to indicate in such Report whether or not, during the period covered by that Report there were: (a) significant changes in Internal Controls; or (b) significant changes in other factors that could significantly affect Internal Controls; or

15. Any person has engaged in "retaliation" (as defined under "**Anti-Retaliation**" below)

against any other person in violation of the anti-retaliation provisions of this Policy.

*Reporting Procedures.* Any person who believes that he or she has observed a “Reportable Offense” as defined above under *Reportable Offenses* should immediately submit a Complaint describing such incident in reasonable detail to his or her immediate supervisor, Priscilla Herrington, who performs the internal audit function (“Internal Auditor”), the Chief Financial Officer, or the Chief Executive Officer or any member of the Audit Committee of the Board of Directors. A current list of the members of the Audit Committee is available at the office of the Corporate Secretary of the Company.

Complaints may be made anonymously to the Audit Committee if the person making the Complaint deems it appropriate by mailing the Complaint to the Chairman of the Audit Committee of The First Bancshares, Inc., P. O. Box 1197, Laurel, MS, 39441, Attn: Doug Seidenburg, or by sending the Complaint by email to [DougS@sburgecpa.com](mailto:DougS@sburgecpa.com), each of which will be received in confidence by the Audit Committee. Persons desiring to report via e-mail who want to ensure their confidentiality should (i) set up an account with hotmail or another third-party provider, and (ii) inform that third-party provider that the account holder information is confidential and should not be disclosed to anyone. This Policy prohibits anyone from the Company from attempting to determine the owner of such account.

Persons making Complaints are, however, encouraged to identify themselves, with the understanding that their identity will be held in confidence and they will not suffer retaliation, in order to enable the Company to clarify details and take appropriate action.

*Handling of Complaints.* All Complaints regarding a Reportable Offense made under this Policy shall be forwarded to all members of the Audit Committee. The Company and the Audit Committee shall handle any Complaint received, directly or indirectly, with the appropriate degree of confidentiality. In accordance with the investigation procedures established by the Audit Committee (“Audit Committee Investigation Procedures”), a review will be made by or on behalf of the Audit Committee and an appropriate investigation, if necessary, shall be made. Further, the Audit Committee, the Board of Directors or management of the Company, as appropriate, shall take the appropriate disciplinary or other action when deemed necessary or appropriate to ensure that this Policy is complied with, monitored and enforced. The Audit Committee has the authority to engage, and cause the Company to pay the reasonable compensation and expenses of, independent legal counsel and other independent advisors as it determines necessary or appropriate to carry out its duties.

*Retention.* The Complaint, materials gathered in any ensuing investigation and any remedial action shall be maintained with the minutes of the Audit Committee or the Board of Directors or with other formal corporate records for the applicable time period required by law or rules of the NASD, provided that the anonymity and confidentiality described above are maintained.

## Important Definitions and Concepts

1. Disclosure Controls and Procedures. The term “Disclosure Controls and Procedures” means the Company’s controls and other procedures that are designed to ensure that information required to be disclosed by the Company in the Reports that it files and submits under the Securities Exchange Act of 1934 (“Exchange Act”) is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure Controls and Procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the Reports that it files and submits under the Exchange Act is accumulated and communicated to the issuer’s management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

2. Internal Controls. The term “Internal Controls” means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards § 319 or any superseding definition or other literature that is issued or adopted by the Public Accounting Oversight Board. Internal Controls thus include those controls and procedures that the Company has adopted to provide reasonable assurance that:

- . the Company’s transactions are properly authorized;
- . the Company’s assets are safeguarded against unauthorized or improper use; and
- . the Company’s transactions are properly recorded and reported

to ensure that the Company’s financial statements are fairly presented in conformity with generally accepted accounting principles.

3. Significant Deficiency. The term “Significant Deficiency” in (a) Internal controls means a deficiency in the design or operation of Internal Controls which could adversely affect the Company’s ability to initiate, record, process and report financial data consistent with the assertions of management in the Company’s financial statements and (b) in Disclosure Controls and Procedures means a deficiency in the design or operation of Disclosure Controls and Procedures which could adversely affect the Company’s ability to record, process, summarize and report the information required to be included in the Reports in a timely manner.

4. Material Weakness. The term “Material Weakness” in (a) Internal Controls means that the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions and (b) Disclosure Controls and Procedures means that the design or operation of one or more of the Disclosure Controls and Procedures components does not reduce to a relatively low level the

risk that the Reports will contain all the information required to be included in the Reports in a timely manner.

5. Fairly Presents. The term “fairly presents” encompasses the selection of appropriate accounting policies, proper application of appropriate accounting policies, disclosure of financial information that is informative and reasonably reflects the underlying transactions and events and the inclusion of any additional disclosure necessary to provide investors with a materially accurate and complete picture of the Company’s financial condition, results of operations and cash flows. A determination that the Company’s financial statements have been prepared in accordance with Generally Accepted Accounting Principles alone is not sufficient in deciding whether the Company’s financial statements fairly present its financial condition, results of operations and cash flows.

6. Materiality. The term “material” means information as to which there is a substantial likelihood an investor would consider it important in deciding whether to buy, sell or hold a security, and there is a substantial likelihood that the information in question would be viewed by a reasonable investor as having significantly altered the “total mix” of information made available. While not part of the judicially created test for determining materiality, courts frequently infer the materiality of information by examining whether the information in question had a significant impact on the price of a security following its public dissemination. Information can be material (a) whether it is positive or negative, (b) whether it was received from the Company or from a source not connected with the Company, (c) whether it affects the Company or its business, financial condition, results of operations, cash flows, assets, net worth or future prospects, or affects the market price of the Company’s equity securities, or (d) even though it would not by itself affect the market price of securities or be the determining factor in an investor’s decision to buy, sell or hold securities. Information need not be historical or certain to be material. Events or projections that are uncertain or contingent may also be material depending upon a balancing of their magnitude and likelihood of occurrence.

### **Anti-retaliation**

The Company shall not, and no officer, employee, contractor, subcontractor or agent of the Company shall, coerce, intimidate, interfere with, discharge, demote, suspend or harass any employee, or expressly or implicitly threaten adverse affects on any employee’s terms and conditions of employment or contract status or in any other manner discriminate against any employee, including without limitation, evaluation, pay, advancement opportunities, job assignments or any other aspect of an employment or contractual relationship (“Retaliation”) for:

- (a) opposing in good faith any of the Reportable Offenses described above,
- (b) making a Complaint under this Policy for any activity that the person believes is a Reportable Offense, or
- (c) providing information, causing information to be provided, or otherwise assisting in an investigation regarding any conduct which the person believes has violated, is violating or is about to violate this Policy or the legal or ethical requirements contemplated thereby (including, without limitation, 18 U.S.C. Sections 1341, 1343, 1344, or 1348, any rule or

regulation of the Securities and Exchange Commission, or any provision of federal law relating to fraud against shareholders), when the information or assistance is provided to or the investigation is conducted by:

- (1) a Federal regulatory or law enforcement agency;
  - (2) any Member of Congress or any committee of Congress; or
  - (3) a person with supervisory authority over the person submitting the Complaint, including the Board of Directors or the Audit Committee of the Company (or such other person working for the Company who has the authority to investigate, discover, or terminate misconduct); or
- (d) filing, causing to be filed, testifying, participating in, or otherwise assisting in a proceeding filed or about to be filed (with any knowledge of the Company) relating to any violation of this Policy or the legal or ethical requirements contemplated thereby (including, without limitation, 18 U.S.C. Sections 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of federal law relating to fraud against shareholders).

Any officer, director, Audit Committee member, employee, contractor, subcontractor or agent who is found to have violated this Policy will be subject to disciplinary action, determined by the Audit Committee to be appropriate in its sole discretion. Nothing within this Policy or within any employee handbook, the Code of Ethics or other document of the Company, generally, should be understood in any way as a limitation on the Audit Committee's right to decide what disciplinary action is appropriate under given circumstances.

The Company trusts that all of its officer, directors, Audit committee members, employees, contractors, subcontractors and agents, will enthusiastically and in good faith endeavor to comply fully with this Policy and the legal and ethical obligations contemplated hereby. The Company encourages persons who have questions regarding accounting or auditing matters, Internal Controls, Disclosure Controls and Procedures, Reportable Offenses or this Policy to raise them with such person's immediate supervisor, any member of management, or any member of the Audit Committee of the Company.