April 14, 2006

TexasBankers
Association
Where banks put their trust

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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: No. 2005-56
regs.comments@ots.treas.gov

Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street & Constitution Avenue, N.W.
Washington, DC 20551
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Office of the Comptroller of the
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250 E Street, S.W., Mail-Stop 1-5
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Re: **FDIC** (No docket ID); **FRB** Docket No. OP-1246; **OCC** Docket No. 05-21; **OTS** Docket No. 2006-01; **Proposed Interagency Guidance on Concentrations in Commercial Real Estate**; 71 Federal Register 2302; January 13, 2006.

Ladies and Gentlemen:

The federal supervisory agencies have proposed an Interagency Guidance on Concentrations in Commercial Real Estate ("Guidance") that raises the possibilities for additional requirements for risk management, the imposition of additional capital and the increase in loan loss reserves for institutions that are deemed to have a concentration in commercial real estate ("CRE"). While not all of the over 700 banks and thrifts in Texas are involved in commercial real estate lending, a significant number of them – including many small and medium sized community banks – are engaged in safe and sound commercial real estate lending practices. For the reasons mentioned below, we believe the proposed Guidance will have a negative impact on Texas banks and our local economies. We therefore ask that the agencies not issue the Guidance in its current form.

There is no evidence of the need for a blanket regulation regarding commercial real estate lending. Indeed, current CRE losses, which were only 16 basis points nationally for Calendar Year 2005, show that prudent lending practices and board oversight are in place. If the agencies are determined to issue new guidelines, they should, at a minimum, provide empirical evidence of the need for additional commercial real estate lending regulations. A group of Texas bankers recently met with your agencies in Washington, and when questioned about the need for this new Guidance, one agency representative told us that, "the best time to fix the roof is when the sun is shining." We would submit that the roof is sound and does not need to be "fixed". The bank failures in Texas 16 years ago and the real estate losses associated therewith were used as another example of the need for the Guidance. Our banks lived through the crises, are acutely aware of the risks associated with all real estate lending and are attuned to LTV ratios and geographic and loan-type diversification. Having experienced it first hand, we would assert that the Texas real estate crash had as much, or

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more, to do with lax savings and loan oversight and changes in federal tax law as it did with real estate concentrations.

Current federal law, with its concomitant supervisory authority, should suffice on an institution-by-institution basis. FIRREA and FDICIA give bank examiners plenty of authority for risk assessment, loan classification and, if needed, prompt corrective action. Furthermore, the Sarbanes-Oxley Act, with its additional requirements for internal and external audits, is an added tool used to ensure that existing banking practices keep abreast of potential portfolio risks.

As proposed, the Guidance would place an additional, costly burden on community banks that would need to counter the assumption of unsafe CRE concentrations. Texas bankers believe they are currently engaging in adequate risk analysis. The increased risk management practices proposed in the Guidance - such as reports on market conditions, new policies, strategic planning, sensitivity analysis and tracking presales – could drown the limited staffs of community banks while providing field examiners additional hoops to make small banks jump through. Many community bankers have sold their institutions because of the existing amount of regulatory burden. To the detriment of many local communities, this proposal could influence others to do the same.

Additional capital requirements and loan loss reserves for community banks involved in CRE could place them at a disadvantage *vis a vis* large interstate banks and non-bank lenders. A mid-sized bank with a 12% capital requirement would not be able to compete against a competitor with a 6% requirement. As such, the institution's shareholders would suffer. In fact, publicly traded, medium size banks are already being scrutinized by stock analysts about the potential consequences of the Guidance.

The bottom line is that the Guidance could threaten the viability of the community bank charter. National competition and the markets have already taken these banks out of the credit, residential mortgage lending and auto lending businesses. Credit unions have begun to dominate larger amounts of consumer banking in our state. As a result, community banks have turned to commercial real estate lending, and it has become a strong part of community banking. Smaller banks can compete against other lender because of their unique local knowledge about their borrowers and their communities. Indeed, banks have shown that they can lend in the CRE market safely, soundly and profitably.

We respectfully request that the agencies reconsider this guidance.

Sincerely,

Rick Smith

Fredrick M. "Rick" Smith
President & CEO
Texas Bankers Association