NYBA

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April 13, 2006

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219

Attention: Docket 06-01 – Concentrations in Commercial Real Estate Lending

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Docket No. OP-1248 – Concentrations in Commercial Real Estate Lending

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW
Washington, DC 20429

Re: Concentrations in Commercial Real Estate

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Attention: No. 2006-01

Dear Sir or Madam:

In response to the request for comment on proposed guidance published in the *Federal Register* on January 13, 2006, the New York Bankers Association is submitting these comments on Concentrations in Commercial Real Estate

Lending, Sound Risk Management Practices. Our Association welcomes the restatement of guidelines by the agencies on commercial real estate lending (CRE). Recognizing that there is a delicate balance in the real estate lending market between the need for lenders to be competitive and strong risk management programs, it is extremely important that any guidance finally adopted make clear that the thresholds included are, in fact, thresholds and not ceilings. We also believe it important that the proposed guidance distinguish between highly urbanized markets such as many in New York State where multifamily buildings are the primary type of residential property securing real estate loans and more rural or suburban areas where that may not be the case. Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State, which have aggregate assets in excess of $3 trillion and more than 340,000 New York employees.

Risk Thresholds

The proposed guidance establishes a threshold for the determination of whether an institution has a concentration in CRE lending that warrants the use of heightened risk management practices. As a preliminary step, an institution is expected to use published regulatory reports to determine whether it exceeds or is rapidly approaching the following thresholds: (1) Total reported loans for construction, land development, and other land represent one hundred percent (100%) or more of the institution's total capital; or (2) Total reported loans secured by multifamily and non-farm nonresidential properties and loans for construction, land development, and other land represent three hundred percent (300%) or more of the institution's total capital. Owner-occupied properties may be excluded from the calculations.

At the outset, we would emphasize the agencies' conclusion that these thresholds are not ceilings. The agencies make clear their intent not to discourage well-underwritten and appropriately risk-managed commercial real estate loans. In some markets, CRE loans are among the most profitable and fastest growing in banks' portfolios.

However, our Association is concerned that the proposed thresholds may not appropriately distinguish between widely varying types of risk assets. Construction loans with take-out commitments or contracts for sale are lumped together with loans secured by raw land for speculative development to meet the 100% threshold, while loans secured by small office buildings, skyscrapers, multi-family apartment and cooperative properties, shopping centers and many other disparate types of commercial buildings are aggregated within the 300% test. While the risk characteristics of some of these loans may be similar to others within these pools, other loans that are characterized in the proposed guidance as CRE have risk characteristics that resemble lower risk assets such as traditional residential mortgage loans. We strongly urge that the agencies refine the risk baskets included in the proposed guidance to eliminate types of loans with traditionally modest risk profiles. In particular, we believe that multi-family residential buildings in New York State markets have a risk profile that is no greater than, and in many institutions lower than, that of residential real property loans. We therefore urge that these types of loans be given special consideration within the thresholds of the proposed guidance.

In many of New York State's highly urbanized areas, such as New York City, Buffalo, Yonkers, Rochester, Syracuse and large parts of Long Island and Westchester County, the primary types of residential properties securing real estate loans are multi-family buildings. Banks with significant portfolios of multi-family loans in these markets have told us that they have developed sophisticated risk management techniques that ensure that the risks of these loans remain modest. Multi-family loans provide financing for the bulk of the housing stock in many New York State communities and should not be singled out for regulatory scrutiny when their risk characteristics do not so warrant.

After New York State modified its foreclosure laws for commercial real estate in 1998, our Association conducted two extensive surveys, most recently last year, to determine the effect of the law on foreclosures. We found that commercial real estate foreclosures had declined to the point that some major lenders had virtually no commercial foreclosures over a seven-year period. Although the period covered was generally free of significant market or interest rate volatility, the minimal number of foreclosures recorded is also a testimony to the successful underwriting practices of major multi-family and commercial real estate lenders in the State. We therefore believe that including multi-family loans in the pool of commercial real estate loans subject to the proposed guidance could adversely affect the New York real estate lending market with no significant advantage to the safety and soundness of the banks involved.

Multifamily lending in major urban areas is a critical component of the infrastructure of the economy of those areas. Such lending is already subject to increased management scrutiny. We urge that the agencies not chill this vital market by inappropriately targeting relatively low-risk multifamily loans for significantly greater regulatory oversight. While continuing to require appropriate levels of vigorous capital requirements and management supervision, we believe the agencies should exclude these types of loans from unnecessary examiner guidance.

Examiner Guidance

The proposed guidance also contains a series of recommended risk management practices designed to ensure that institutions that meet the concentration thresholds in CRE described above have in place systems and procedures that will permit them to manage the risk of an adverse credit, interest rate or economic environment. Our Association believes that, in general, these recommended risk management practices are necessary and appropriate for financial institutions that engage in significant amounts of higher-risk CRE lending. In fact, we are informed that major CRE lenders in the New York State marketplace already have in place most, if not all, of these systems and procedures.

Our concern is that some of the recommended practices may be interpreted to require tightened underwriting standards or increases in capital where the risk profile of the institution may not warrant any changes. Statements such as "[E]ven when individual CRE loans are underwritten conservatively, large aggregate exposures to related sectors can expose an institution to an unacceptable level of risk" may encourage analysts, examiners or shareholders to question the risk management techniques of even the most conservative lenders. Therefore, they may compel lenders in some cases to react by significantly increasing costly risk management techniques or even reducing otherwise profitable types of lending. We urge the agencies to draft any guidance finally issued in a fashion that avoids statements that could be misinterpreted to indicate that any current level of risk management by institutions with concentrations of CRE in their portfolios, no matter how sophisticated or successful, may be seen as insufficient.

The New York Bankers Association appreciates the opportunity to comment on this proposed guidance. We urge the agencies to amend the proposed guidance to reflect the risk management techniques that the vast majority of commercial and savings institutions have already adopted to manage the risks in their portfolios. We believe that thresholds should be modified with regard to less risky assets, such as multi-family housing loans, and that suggested risk management techniques should clarify that institutions that are already adequately managing the risk in their portfolios do not need additional systems, procedures and capital for risk management.

Sincerely,

Michael P. Smith