POWELL GOLDSTEIN LLP

Atlanta ▪ Washington

RESIDENT IN WASHINGTON OFFICE
DIRECT DIAL: (202) 624 - 7261
JREVEAL@POGOLAW.COM

April 4, 2006

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 – 17th Street, NW
Washington, DC 20429

Via E-Mail: Comments@FDIC.gov

Re: Comments on Proposed Guidance: Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices

Ladies and Gentlemen:

Powell Goldstein LLP is submitting this comment, on behalf of United Community Banks, Inc. ("UCBI"), with respect to the proposed Interagency Guidance entitled "Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices," as was published in the January 13, 2006, issue of the Federal Register (the "Proposed Guidance" or "Proposal"). UCBI is the third largest traditional bank holding company in Georgia, with assets of $6 billion. UCBI is headquartered in Blairsville, Georgia and operates 90 banking offices in Georgia, North Carolina and Tennessee. UCBI specializes in providing personalized community banking services to individuals and small to mid-sized businesses in its markets.

Summary of comments

We understand the Agencies' concern that all banks maintain effective internal controls and risk management practices to safeguard each bank from excessive risk in the commercial real estate ("CRE") lending market. However, we respectfully submit that the Proposal is unnecessary, may be detrimental to community banks, and could even help lead to a downturn in the commercial real estate market.

If the Agencies remain certain that additional CRE guidance is necessary, UCBI requests that the final guidance be more clearly limited to business-purpose real estate loans where the source of repayment predominantly depends on rental income, sale of the collateral property, or permanent financing of the property. In particular, UCBI would request that the final guidance make clear that it does not apply if either (a) the collateral property is owner occupied or, in the case of non-residential property, primarily owner-occupied *or* (b) the bank primarily is relying on cash flow, salary or other income of the borrower or any guarantor for repayment and not primarily on rental income from or resale of the property. In this way the Proposed Guidance would focus better on the Agencies' apparent concerns.

New Guidance is unnecessary

As noted in the Proposed Guidance, banks already are subject to regulations on real estate lending standards and the *Interagency Guidelines for Real Estate Lending Policies*. See 12 CFR Part 365 for state non-member banks, 12 CFR Part 34 for national banks, and 12 CFR Part 208, subpart E, for state member banks. Banks also are subject to the *Interagency Guidelines Establishing Standards for Safety and Soundness* (at 12 CFR Part 364, appendix A, for state banks). We believe that the best method of monitoring risk management in the area of CRE lending is through the examination process and these existing regulations and guidelines.

With existing regulations and guidelines, and through the examination process, examiners can assess risk in each institution based on management, portfolio composition and diversification, and risk control and monitoring in each institution. These existing regulations and guidelines provide examiners with the needed authority to direct specific banks to change their particular lending policies, procedures and controls, or, in appropriate cases, increase their capital or reduce commercial real estate lending or concentrations based on that bank's circumstances. A "one size fits all" approach as suggested in the Proposed Guidance would not be appropriate.

As a means of reminding institutions of the existing regulations and guidelines, and to inform the industry that the Agencies have heightened concerns for CRE lending concentrations, the Agencies could simply issue an Advisory. The Proposed Guidance is not necessary.

We also believe that there is not at this time any clear evidence that in fact CRE lending presents heightened safety and soundness concerns. In fact, based on a recent empirical study by the FDIC in the Atlanta Region, such action is unwarranted. As part of a pilot program conducted by the FDIC in 2003 in the Atlanta metropolitan statistical area, the FDIC found little indication that banks were failing to manage CRE lending risks:

> Results show that area bankers are generally knowledgeable about CRE market conditions in the Atlanta MSA. In addition, insured institution risk controls and monitoring programs have improved significantly since the early 1990s. Overall, bank management has implemented more effective grading systems, improved control and approval limits, and adequate loan review procedures.

Published in the Summer 2004 issue of the FDIC's "Supervisory Insights." In a Fall 2003 Regional Outlook published by the FDIC, the FDIC's Atlanta Regional Director commented with respect to the pilot program that "banks are well aware of CRE lending risks and are managing those risks in a satisfactory manner."

While there are those economists who seem instinctively to believe that there is a real estate "bubble" that could soon burst and affect the nations economy, we believe that many banks with a CRE focus are well prepared to deal with the concern. Additionally, any "bubble" might be limited to specific markets within the national economy. If all banks were to be made subject to mandatory requirements such as those set forth in the Proposed Guidance, we believe that the Agencies first should conduct an appropriate study to determine whether in fact banks having concentrations in the commercial real estate lending market are subject to enhanced levels of risk.

The Proposed Guidance would lead to overly strict and unrealistic enforcement

While the Proposal is entitled "guidance," we are concerned that it in practice it would be treated by examiners as formal and inflexible regulation. We recognize that aspects of the Proposal suggest that a flexible approach by banks might be appropriate, but as a practical matter we believe it likely that examiners would interpret each "guideline" as an absolute and inflexible rule. Part of the problem with this approach, as discussed further below, is that we believe it is inappropriate to treat all types of CRE credit, in all geographies, and for all banks, as the same.

Uniform and rigid standards for CRE lending are impracticable and inappropriate

We believe that the Proposal would inappropriately treat virtually all commercial real estate loans as the same, regardless of the purpose of the CRE, the geographic location of the CRE, or the industry engaged in by the particular borrower. There are many different types of CRE, with each type being subject to different economic, market and risk factors. For example, resort condominium development projects would involve different economic and risk factors than would stand-alone houses or office buildings.

In addition, even within the narrow category of CRE used for office buildings, for example, the industry of the borrower and the nature of the office space will impact the risk of loans secured by such CRE. Further, these risks will vary from market to market, sometimes even within submarkets and smaller geographies. To assume, as the Proposal suggests, that concentrations in excess of 100% or 300% of the institution's capital automatically are higher risk is to ignore these important variables.

<u>The Proposal unfairly impacts community banks and could precipitate an economic downturn</u>

UCBI has bank branches throughout the southeast, including in many rural and semi-rural areas. UCBI's experiences have shown that UCBI and other similar and smaller community banks are the primary commercial real estate lenders for their communities. Certainly the large nationwide banks engage in commercial lending, but those large banks typically do not compete in the small to medium commercial real estate lending market. Businesses in our communities therefore rely on community banks such as UCBI for their borrowing needs.

In UCBI's case, their total CRE loans at this time are somewhat in excess of the 100% and 300% concentration thresholds set forth in the Proposal. Nonetheless, UCBI has an outstanding performance record, and its CRE portfolio is a significant factor in that performance.

UCBI believes that at least 50% of all community banks have similar concentrations in commercial real estate loans. Thus, the Proposal could force many community banks to reduce their overall CRE lending. Because most community banks will have similar concentrations of CRE loans, the commercial borrowers that one bank would need to turn away under the Proposal might have no other avenue for their borrowing needs. The Proposal thus could limit CRE lending and bring about the economic down turn that the Proposal presumably is intended to protect against.

At the same time, larger regional and nationwide banks are not likely to be affected in any significant way by the Proposal. Those larger banks have significantly greater capital and thus are better able to avoid CRE lending concentrations in excess of the proposed 100% and 300% thresholds. At the same time, to the extent that community banks are driven out of the CRE lending market, the larger banks will gain yet another competitive advantage or, on the other hand, simply chose not to serve this segment of the economy.

<u>If additional rules are necessary, they must be more clear as to scope</u>

If the Agencies continue to believe that additional CRE rules are necessary, it is important that those rules more clearly distinguish between loans that are predominantly dependent on rental or resale income for repayment and those that depend on the commercial borrower's cash flow. The Proposal would exclude loans secured by owner-occupied 1-to-4 family homes. The apparent rationale is that such loans are dependent on the borrower's income and cash flow for repayment and not on rental income, resale of the property or refinancing of the property for repayment. However, many other owner-occupied commercial properties share this characteristic. Banks making loans for the acquisition or construction of an office building that the borrower would occupy generally will rely in significant part on the borrower's cash flow and income separate and not on the resale value or rental of the property.

Therefore, we believe that owner occupancy should not be the sole basis for excluding loans from the definition of CRE under the Proposed Guidance. A more appropriate test is whether the bank is relying predominantly on the resale, rental or refinancing of the property for repayment of the loan, and exclude all loans from the CRE definition that are either fully owner-occupied (in the case of residential properties) or partially owner-occupied (in the case of non-residential properties). If the bank is instead relying primarily (at least 51%) on the borrower's cash flow and other income (other than rental or resale of the property), that loan should not be subject to the new CRE lending rules.

* * * * *

UCBI has appreciated this opportunity to comment on the Proposed Guidance.

Sincerely,

John ReVeal

JR/dmj