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SpiritBank

April 6, 2006

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

RE: Docket No. OP-1248

Dear Mr. Feldman:

We are pleased to have the opportunity to voice our concerns pertaining to the proposed guidance, Docket No. OP-1248, entitled *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices*. SpiritBank is a state-charted bank and member of the Federal Deposit Insurance Corporation. Our bank takes great pride in being a community bank built on community and family values.

Emerging competitors, with in many cases less regulatory oversight, have forced community banks to pursue commercial real estate in order to remain competitive and still make sound loans. They have been gradually squeezed out of being able to do significant volumes of most types of consumer lending. Auto lending has been dominated by the captive finance companies at the point of sale. Credit card lending has become dominated by those companies with only the largest mass media and processing capabilities. Realtors capture residential mortgage prospects at the point of sale, while bankers are prohibited from doing so. Other types of consumer lending are often absorbed by the large credit unions who use their tax-exempt status to price below their smaller community bank competitors. It is interesting that credit unions are not subject to the proposed guidance, which is yet another regulatory advantage for them.

While we agree with the idea that having too many loans that present similar types of risk constitutes a "concentration" of risk that ought to be avoided, we feel that other aspects of this guidance are unwarranted. These particular proposed new requirements would mark a major step in the direction of government forcing a large number of community banks to sell themselves to larger banks due to an inability to operate profitably in a regulatory environment designed to put them at an extreme disadvantage.

We strongly disagree with the following five components of the proposed guidance:

1. All business loans secured by mortgages on real estate present similar kinds of risks and, therefore, should be considered a single "concentration" of loans for the purpose of evaluating credit risk.

These types of loans can be very diversified by geography, loan type, and repayment sources. Such diversity illustrates why they do not present a single, concentrated risk; therefore, the system should not treat them as such.

2. Loans secured by mortgages on real estate constitute a greater risk of loss to banks than loans that are not secured by mortgages.

If the bank chose to replace commercial loans secured by real estate with unsecured lines in similar amounts, or replace them with credit card debt, the bank would have much more risk. Commercial real estate loans, considering the loan-to-value guidelines actually present a lesser risk than many other types of loans.

3. Community banks with a large number of real estate loans should be required to hold higher levels of capital than other banks because they present a riskier profile.

We believe that this issue is closely related to the Basel IA discussion and goes to the heart of the future of community banking. Market forces and government regulation have pushed community banks into a position where one of the only channels left for making a profit sufficient to satisfy investors is commercial real estate lending. But if community banks are now required to hold much higher levels of capital against their assets (and, in some cases, against the exact same types of loans), it would likely sound the death knell for community banks with investors. If group A banks are required to hold 12% capital against certain commercial real estate loans and group B banks need only hold 6% capital against the same loans, group A banks will either be forced to price much higher than group B (and probably lose all of that business to the significantly lower prices), or group A banks will be forced to match the group B pricing and produce a 50% lower return on shareholder equity. It would not take long for investors to observe the differences, and group A banks would be compelled to sell to larger banks who have the benefit of the lower capital.

4. With the further conclusion that community banks with a large number of real estate loans should be required to hold higher levels of loan loss reserves than other banks because they present a riskier profile.

The notion that a loan secured by real estate is riskier is, quite simply, a false premise. Both common sense and experience indicate that the risk of loss on these loans is lower than the risk of loss on other loans. Imagine two $500,000 loans to the same borrower, one secured by a mortgage on real estate valued at $750,000 and the other unsecured. If the borrower's financial condition deteriorates to a point where we anticipate that he may stop making his payments on both loans, should we expect the same loss on both loans and hold the same level of reserves against both? Of course not. To do so would be foolish. It is much more likely that we will have much less of a loss (if any loss at all) on the loan secured by real estate. So why *should we be required to hold higher levels of reserves in the aggregate against these loans? Such a proposal does not make sense.*

5. With the amount of time, money, effort and paperwork that community banks should be required to do to disprove the assumption that they have an unsafe "concentration" of real estate loans.

The extensive requirements set forth in the guidance are very concerning. Reports on market conditions, increased board oversight, new policies, strategic planning, quantifiable limits, contingency plans, feasibility studies, sensitivity analysis, stress-testing, tracking presales and on and on. This all adds up to a substantially increased regulatory burden when resources are already limited.

In conclusions, we ask the Agencies to consider the detrimental impact that this proposed guidance would have on the community banking system.

Sincerely,

Albert C. Kelly

Albert C. Kelly, Jr.
President & CEO