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Robert V.A. Harra, Jr.
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April 7, 2006

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2006-01

RE: Docket No. 2006-01
"Concentrations in Commercial Real Estate Lending,
Sound Risk Management Practices"

Wilmington Trust Company appreciates the opportunity to comment on the proposed guidance, "Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices" issued on January 10, 2006 by the Office of the Comptroller of the Currency, Treasury (OCC), the Board of Governors of the Federal Reserve System (FED), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision, Treasury (OTS) (proposal).

Wilmington Trust is a financial services holding company that provides wealth management and trust services to clients throughout the United States and in 85 countries, and commercial banking services throughout the Delaware Valley region. Our wholly owned subsidiary, Wilmington Trust Company, which was founded in 1903, is the 15th largest personal trust provider in the United States and is the leading retail and commercial bank in Delaware. We serve the southeastern Pennsylvania market through our Wilmington Trust of Pennsylvania subsidiary, while the remainder of our banking business is conducted through Wilmington Trust FSB, our thrift subsidiary. We are unique in terms of our size – larger than the majority of traditional community banks but significantly smaller than most nationwide banking organizations. We believe our institution will be affected by the proposed guidance in much the same way that smaller community banks will be affected.

We understand the purpose of this proposal is to address the perceived vulnerability of financial institutions having high and increasing concentrations of commercial real estate loans on their balance sheets. We agree that this type of lending poses unique risks and should not be undertaken by institutions ill-equipped to conduct such lending activities in a risk-sensitive manner. However, we believe that the foundation for effective commercial real estate lending has been well-established through existing legislation, notably FIRREA and FDICIA. As such, we are concerned the release of new guidance at this time will lead to undesirable effects on real estate lending, the economy, and on the banking industry in general. Those concerns are outlined below:

- Real estate development activity has been a significant driver of economic growth in the country in recent years, and this has been particularly true for the mid-Atlantic region served by our Bank. The State of Delaware has seen significant residential development activity over the last five years and housing starts and absorption statistics remain strong. The increased population base in many of our markets is driving the need for nearby commercial development projects (retail centers, office complexes, schools, etc.).
- While the agencies have noted the proposal is not intended to cap real estate lending activity, the likely result of the proposed guidance ***will*** be a curtailment or significant cutback in real estate lending by some institutions. History would suggest that such curtailment/cutback would be most prevalent among larger financial institutions, leaving the community banks with even higher potential commercial real estate concentrations than they now see.
- The effect of a cutback in real estate lending activity would adversely affect the general economy in our market area, as many of our commercial and industrial businesses depend on a healthy real estate market for growth and success. Certainly, construction contractors and subcontractors providing special trades have their success linked directly to the health of the real estate market. Likewise for suppliers to such businesses. A less direct effect can be seen among the small businesses or medical practices that might open doors in a new retail or office complex, or among the jobs that might be created in conjunction with the opening of a new distribution center for a major retailer. A change in real estate lending practices may challenge our general economic vitality.

Beyond the potential macroeconomic implications of the proposal, we also have concerns about certain specific elements of the proposed guidance. The following briefly describes those concerns:

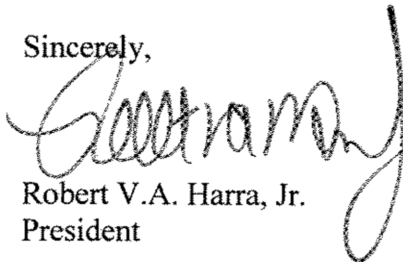
- Definitions are unclear for a number of terms. Will "owner occupied" refer only to properties titled in the same name as the main occupant? Clearly, such a narrow definition would be inconsistent with the tax strategies employed by many astute business owners. Likewise, in defining "hard equity" requirements, what consideration will be given to properties acquired under option and taken through rezoning and development approval prior to a developer taking title to a property? The imposition of hard-and-fast percentages based upon the "lower of cost or market" without regard to the circumstances of a purchase transaction would, ironically, penalize real estate developers who have employed risk-sensitive development strategies.
- The detailed list of criteria suggested for ongoing monitoring of commercial real estate loans suggests a departure from traditional risk management approaches; rather than maintaining flexibility for institutions to define risk management procedures appropriate to their unique portfolios, a one-size-fits-all "checklist" approach seems to be advocated. We fear this will lead to enforcement that emphasizes form over substance.
- Requirements for formalized portfolio stress-testing and contingency-planning place community banks at a decided disadvantage. The guidance acknowledges that stress-testing at the portfolio level is an evolving practice, but this is an understatement. Absent the in-house quantitative analysis teams enjoyed by

large regional banks, and given the lack of available tools for tracking and aggregating project-specific risk components, "stress testing" would be limited to broad measures with questionable data integrity.
- The suggestion that Bank Boards of Directors should prescribe strategies for real estate concentration management encourages directors to cross the line from governance into management. It has been our understanding that, under Section 101 of the Sarbanes-Oxley Act, Boards were to become less involved in management, so as to preserve their independence.
- Finally, the guidance provides no standards to govern the proposed imposition of higher capital requirements on institutions deemed to have CRE concentrations. A generic approach to such capital allocation will only serve to penalize those banks that underwrite sound real estate loans. Again, it is worth noting that the imposition of additional capital requirements would clearly place community banks at a competitive disadvantage vis-à-vis larger regional bank peers (a situation surely to be compounded by the impending Basel II capital reform).

In conclusion, although the issuers have indicated that the guidance is not intended to curtail real estate lending activity, we are concerned that the examining staffs at each of our regulatory agencies will be inclined to use the guidance as the sole measure of a bank's real estate portfolio. Because of this, issuance of new guidance at this time will undoubtedly have a chilling effect on real estate development and will preclude a "soft landing" for the real estate market and for the economy overall. Further, we believe the proposed guidance would impose an unnecessary level of regulatory burden on the banking industry, and would disparately affect smaller banks throughout the system. Existing regulations, including those defined by FIRREA and FDICIA, provide the basis for sound commercial real estate lending. Our suggestion would be to ensure enforcement of the requirements outlined in those existing regulations rather than imposing new requirements for risk management at this time.

Again, we appreciate the opportunity to comment on this proposal. Thank you for considering our views. If you would like to discuss this letter in more detail, please contact Karen Thuresson at 302-651-1486 or kthuresson@wilmingtontrust.com .

Sincerely,



Robert V.A. Harra, Jr.
President

cc : FDIC
Federal Reserve