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July 9, 2007

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

Re: **Docket OCC-2007-0011**; Special Lending Limits for Residential Real Estate Loans, Small Business Loans, and Small Farm Loans; 12 CFR Part 32; 72 Federal Register 31441; June 7, 2007

Ladies and Gentlemen:

The American Bankers Association (ABA) appreciates this opportunity to comment on recent steps taken by the Office of the Comptroller of the Currency (OCC) to minimize unnecessary differences between the lending limits that apply to national banks and the limits that apply to state banks. The ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Since 2001, the OCC has conducted a pilot lending limit program that allows qualifying community banks to lend up to the lending limit for state banks, when that limit is higher than the national bank lending limit, for residential real estate loans, small business loans, and small farm loans. That pilot program was originally for three years, and the OCC extended the pilot in 2004 for another three years. The OCC now proposes to make the program permanent.

The ABA has supported the OCC's pilot program since its inception, and we now support making this program permanent. We suggest that the OCC take the following additional steps:

- Include multifamily housing construction loans as a category of loans eligible for the higher lending limits; and
- Remove the aggregate limit on the amount of all loans than any one bank may make under the lending limit program.

Analysis

Twelve U.S.C. 84 authorizes the OCC to establish lending limits “for particular classes or categories of loans” that are different from those expressly provided by the statute’s terms. In 2001, relying on this authority, the OCC published a final rule establishing a pilot program with special lending limits for residential real estate loans and small business loans. In comments on that initial proposal, ABA urged the Comptroller to include agricultural-related loans as well, but the OCC declined to do so for the initial pilot.

In 2004, the OCC extended the pilot program for three more years and added, as a category of loans eligible for higher lending limits to match the state lending limits, small farm loans. ABA supported both the extension of the program and the addition of small farm loans.

The OCC has maintained strict supervisory standards for approvals for community national banks to participate in the program and for the loans eligible for the higher lending limits. For example, the amount that a bank may lend under the pilot program’s special limits is subject to an individual borrower cap and an aggregate borrower cap expressed as percentages of the bank’s capital and surplus. Additionally, a bank must apply and obtain the OCC’s approval before it may use the special lending limits. The application includes: a certification that the bank is well capitalized and has the requisite ratings; citations to relevant state laws or regulations on lending limits; a copy of a written resolution by a majority of the bank’s board of directors approving the use of the new lending authority; and a description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

The OCC reports that it has approved more than 288 national banks in 24 states to participate in the pilot program, representing nearly 15% of community national banks. In deciding whether to make the pilot program permanent, the OCC has collected supervisory data on the use of the program, including:

- (1) Adherence to the capital and surplus limits;
- (2) Adherence to the \$10 million cap on loans to one borrower;
- (3) Whether loans made under the pilot program were subject to supervisory criticism and, if so, the amount of such loans and the category of supervisory criticism;
- (4) Whether loans made under the pilot program were past due and, the amount of such loans;
- (5) Whether banks had adequate internal controls and monitoring systems to provide oversight of loans made under the pilot program; and
- (6) Whether loans made under the pilot program were in compliance with the resolutions issued by the bank’s board governing the program.

The OCC concludes from its supervisory data that the expanded lending limits capacity has had no negative impact on the asset quality and safety and soundness of participating institutions and that the authorization to use higher lending limits has been consistent with the safety and soundness of participating institutions. Additionally, national banks that have made use of the program have told the OCC that the special lending limits allowed them to serve their communities better. Therefore, the OCC concludes that it is appropriate to make the pilot lending limit program permanent and to

eliminate the limit on loans to one borrower of \$10 million as no longer necessary. ABA supports the OCC's proposal, but recommends some additional changes for the OCC to consider.

Recommendations for Additional Changes

ABA still is being told by organizers of *de novo* banks that the choice of initial charter is overwhelmingly for a state over a national charter. Consistently, ABA is told that one of the primary reasons for this choice is the generally more restrictive lending limits under the national charter. While the OCC's lending limit program has reduced that unnecessary disparity between some states' banks and national banks, ABA believes that further improvements could be made.

First, as the OCC has noted, there are at least 24 states with higher lending limits than the national bank lending limits. While the OCC now allows national banks through the lending limit program to approach those higher limits in the categories of 1-4 family residential mortgages, small business, and small farm loans, ABA recommends that the OCC add the category of multifamily construction loans. As the Agencies themselves acknowledged, properly structured multifamily construction loans are generally safer than other types of commercial real estate lending, as seen by this excerpt from the Agencies' final Guidance on Concentrations in Commercial Real Estate Lending:

Further, commenters recommended that multifamily construction loans with firm takeouts or loans on completed multifamily properties with established rent rolls be excluded from the scope of the guidance. Commenters contended that multifamily residential loans have much less risk than CRE loans that have no firm takeout or established cash flow history. . . . Further, **the Agencies acknowledge in the final guidance that consideration should be given to the lower risk profiles and historically superior performance of certain types of CRE such as well-structured multifamily housing loans**, when compared to others, such as speculative office construction.¹ [Emphasis added.]

Therefore, ABA believes that it would be appropriate for the OCC to add this category of loans into the lending limit program either as part of the permanent change or on a pilot basis for a three-year period. If the OCC chooses a pilot program, at the end of that three-year period the OCC could assess, as it did with the initial pilot program, the overall performance of such loans under the pilot authority and determine if this additional category should be made a permanent addition to the program.

Second, ABA recommends that the OCC eliminate the 100% of capital and surplus cap on loans made under the lending limit program. The OCC's limit on loans to one borrower under the lending limit program will continue to be 25% of capital and surplus, which appears to limit the lending exposure of the bank adequately. We can see no safety and soundness reason for the additional aggregate limitation. While such a limit was appropriate for an untried pilot program, the OCC's supervisory data finds that these loans have posed little or no additional risk to the banks, and we believe that the additional limitation is no longer necessary.

¹ 71 FR 74582.

Conclusion

ABA fully supports the OCC's proposal and applauds the OCC's efforts to aid community national banks in promoting the value of their charters to serve their customers and their communities. However, ABA recommends that the OCC make two additional changes to the lending limit program. First, the OCC should add as another eligible category of loans multifamily construction loans. Second, the OCC should remove the aggregate cap of 100% of capital and surplus on loans under the lending limit program.

Thank you for your consideration of these comments. If you have any questions, please call the undersigned.

Sincerely,

A handwritten signature in cursive script that reads "Paul Alan Smith".

Paul Smith
Senior Counsel