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March 8, 2006

Mr. John C. Dugan
Comptroller of the Currency
U.S. Department of the Treasury
250 E Street, SW
Washington, DC 20219

Dear Mr. Dugan,

I would like to express my serious concern regarding rulings from the Office of the Comptroller of the Currency (OCC) that were issued in December 2005 affecting the separation of banking and commerce.

The historical and fundamental rationale for maintaining a separation between banking and commerce is well established and rarely questioned. Ensuring an unequivocal separation is enforced by federal regulators continues to be a priority in Congress and across America. As you know, there has been strong, bipartisan congressional opposition to the December 2000 proposal by the Federal Reserve and the Treasury to allow financial holding companies to engage in real estate brokerage and property management. Congress has approved legislation every year since the proposal was offered to prohibit its implementation and legislation which I have introduced to prevent national banks from conducting real estate activities is supported by more than 250 members of the House.

Despite the widespread support to preserve the wall between banking and commerce, the rulings issued by the OCC appear to do just the opposite.

In interpretive letter #1044, the OCC granted approval of PNC Bank's proposal to develop a new, mixed-use office building adjacent to the its headquarters building in Pittsburgh, Pennsylvania. This project includes condominiums as well as hotel and office space. According to estimates in the letter, PNC would ultimately occupy approximately 25% of the office space and occupy approximately 10% of the room-nights at the hotel. The condominiums would be sold upon the completion of the development and according to PNC are necessary to make the project "economically viable."

While I do not question the bank's need for additional office space and legal right to develop real estate for banking purposes, the proposed development does raise some significant questions and concerns. Specifically, the letter seems to provide a rationale that would enable banks to develop projects for limited or minimal banking purposes and then exploit that development to enter into traditionally commercial activities, such as selling real estate or owning hotels. While judicial precedents allow for banks to make the best economic use of property, I believe the OCC must use caution in allowing banks unchecked power to delve into commercial activities under the guise of projects intended for banking purposes.

As noted above, the sale of real estate by banks is an issue of great concern to me as well as other in Congress. The letter justifies waiving normally restricted real estate activities by claiming that the sale of condominiums will make the project economically viable and reduce the amount of property held by the bank, thereby keeping more capital flowing. Given the fact that in this instance the bank will occupy less than a quarter of the premises, I am concerned that the OCC is setting a disturbing precedent that will allow banks to sell real estate in conjunction with projects that are only minimally developed for bank purposes. Without properly enforced restraints, banks may use this precedent to justify future developments that seek to seize upon the previously denied ability to sell real estate. Such a dangerous breach of the banking and commerce divide appears to run counter to the OCC's objective to "ensure the safety and soundness of the national banking system."

In interpretive letter #1045, the OCC granted approval of Bank of America's development of a hotel adjacent to its headquarters building in Charlotte, North Carolina. The bank would be the sole owner of the development and contract with a hotel management company to manage the hotel. According to the letter, the bank intends to use approximately "37.5% of the total rooms in the hotel on an annual basis." The letter further states that providing lodging for bank employees and visitors is a legitimate business concern and therefore a justifiable exemption to the traditionally prohibited activity. The rationale detailed in the letter is a significant expansion of the precedent cited in the letter, which related to a previous interpretive letter that allowed a bank to maintain residential condominiums for use by bank employees, contractors, etc.

Owning a commercial business and owning real estate are distinctly different activities with unique liabilities and benefits. The new precedent outlined by the OCC appears to authorize banks to develop and own commercial businesses so long as that business fulfills a legitimate business concern of the bank. A reasonable interpretation of this precedent would seem to allow banks to own restaurants, charter airplanes, rent limousines, and engage in a host of other commercial activities that fulfill just as much of a business concern to the bank as does owning a hotel.

Finally, I am concerned about the cumulative effect caused by the policies propagated by the OCC, particularly pertaining to the shrinking gap between banking and commerce. As mentioned, I believe the interpretative letters cited above create dangerous precedents that will lead to increased opportunities for banks to take part in commercial activities they are traditionally prohibited from. One of the many reasons for the historic prohibition of these activities is the inherent conflict of interest that would exist if banks are involved in commerce. If banks are permitted to expand into commercial activities, the greater business community must ask itself if, and on what terms, these banks will finance competing hotels, real estate developments, and other potential businesses. The risks presented by these policies threaten another OCC objective – to “ensure fair and equal access to financial services for all Americans.”

I look forward to your response addressing my concerns and I am hopeful Congress will continue to closely examine how to effectively regulate the separation between banking and commerce.

Sincerely,

A handwritten signature in blue ink that reads "Ken Calvert". The signature is fluid and cursive, with a long horizontal stroke at the end.

KEN CALVERT
Member of Congress