Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

January 31, 2006

Mr. Thomas M. Stevens, GRI, CRB, CRS
President
National Association of REALTORS®
500 New Jersey Avenue, N.W.
Washington, D.C. 20001-2020

Dear Mr. Stevens:

Comptroller Dugan has asked me to respond to your letter of January 27, 2006, in which you raise a number of legal issues about three interpretive letters recently issued by the OCC; two dealing with the authority of national banks to own different types of bank premises (the "Bank Premises Letters"), and one dealing with an energy project financing transaction (the "Project Financing Letter").

First, let me assure you that the Letters have absolutely nothing to do with real estate brokerage by national banks. The only letter that even mentions the topic does so in the context of making clear that any real estate brokerage connected with the transactions will be engaged in exclusively by third party brokers unrelated to the national bank.

The Letters deal only with limited situations where holding an interest in real estate has long been recognized as permissible for national banks. The Letters absolutely do not open the door for national banks to engage in broad-based real estate development activities, nor do they violate the separation of banking and commerce. By statute, national banks have only limited authority to hold real estate. This limited authority precludes them from engaging in activities that would breach the separation between banking and commerce. But this authority does enable national banks to take different types of direct and indirect interests in real estate as part of their banking business.[1] Over the last 100 years, the courts and the OCC have interpreted this limited authority to permit – or prohibit – particular types of activities, based on particular facts.

The three Letters are entirely consistent with this body of precedent. The Bank Premises Letters permitted two banks to develop property they already owned, in ways that served each bank's

[1] Another limited authority for national banks to make direct and indirect investments in interests in real estate is pursuant to their authority to make investments that promote the public welfare. Under 12 U.S.C. 24(Eleventh), national banks provide financing for low income housing, and gain low-income housing tax credits, through investments in limited partnerships and limited liability companies that hold and develop properties for housing.

banking operations. The Project Financing Letter permitted a bank to structure a financing that was the functional equivalent of a loan, and underwritten like a loan, through an equity interest, in order for the bank to capture certain tax benefits.

The limits contained in the Letters, based on the limits on national banks' authority, preclude the extreme consequences that you suggest in your letter. The OCC fully recognizes these limits and will apply them consistently to all national banks. Ongoing adherence to these standards will be subject to review during OCC's regular supervision of the involved banks.

The remainder of this letter sets out in detail why your criticism of the three Letters and of the precedent supporting them is unfounded.

The Bank Premises Letters (Interpretive Letters Nos. 1044 and 1045)

Well-established judicial precedent and OCC interpretations expressly recognize the authority of a national bank to hold and develop property used for the bank's own operations, offices, and lodging for employees and customers, and to lease or sell the portion of the property that the bank does not need to third-parties. This authority also is subject to substantial limits and constraints. The acquisition of real estate or establishment of bank facilities must be conducted in good faith in furtherance of a bank's banking operations, and not as general real estate development. The burden is on the bank to demonstrate a legitimate business reason based on accommodating its banking business operations for acquiring and/or developing the property for the projected use. The OCC looks to the percentage of use or occupancy of property in conjunction with the bank's business as a measure of good faith use of the property for banking purposes. Finally, the use must not be inconsistent with the purposes behind the limits of section 29. In particular, the investment must not be speculative or motivated by realizing a gain on appreciation of the real estate property value. We found the two bank premises proposals to be consistent with these standards.

A. Bank Premises Letter No. 1045

Interpretive Letter No. 1045 addressed the establishment of a hotel facility, on property already owned by the bank, which would be adjacent to the bank's corporate headquarters. The bank represented that it intended to use more than 50 % of the occupied rooms to lodge out-of-area bank employees, members of the bank's board of directors, and selected vendors, shareholders, customers and others who were visitors on bank-related business. In these circumstances, we concluded that the facility would constitute permissible bank premises.

Your letter asserts that this Letter is not supported by cited case authority with respect to the percentage of bank usage expressly authorized. Specifically, you assert that *Wingert*[2] (upholding bank's authority to tear down bank building and construct new six story office building in which bank will occupy only first floor, or 16.7% of the structure), and *Wirtz*[3] (recognizing bank's authority to occupy 20.7% of office complex and lease remaining space as excess premises) are distinguishable. You attempt to distinguish *Wingert* on grounds that the case applies only when

[2] *Wingert v. First Nat'l Bank*, 175 F. 739 (4th Cir. 1909), *appeal dismissed*, 223 U.S. 670, 672 (1912).

[3] *Wirtz v. First Nat'l Bank & Trust Co.*, 365 F.2d 641, 644 (10th Cir. 1966).

a bank has "long-owned" the real estate upon which construction will take place. You assert that *Wirtz* is not applicable here because *Wirtz* is a Fair Labor Standards Act (FLSA) case, and nothing in the ruling suggests that the court was "recognizing" the bank's authority to occupy space and lease the remaining space. You also suggest that while developing an office building would be bank premises, developing a building to lodge bank employees, officials, service providers and customers would not be.

These assertions are incorrect, and I will address each, in turn. The *Wingert* case does not hold that section 29 requires that development of bank premises with excess space occur only on property long-held by the bank. And even if the holding in *Wingert* had been premised upon the bank's previous long ownership of the real estate, that criteria is satisfied in Interpretive Letter 1045.[4] The bank has owned the property for years and currently uses it for bank parking – another permissible type of bank premises. In any event, *Wingert* does not require that bank premises development occur only on long-owned property. *Wingert* addressed the first complaint – that the board of directors exercised poor judgment in engaging in an unwise business proposition – by noting that the new building would be constructed on long-held bank premises. However, when addressing the second complaint – that the construction violated section 29 – the court did not discuss the long-standing use of the premises, nor rely on the use of the property being for offices, rather than another type of bank use.

The decision in *Wirtz* did center on the FLSA. However, the *Wirtz* court specifically recognized the authority of a national bank to occupy space in bank premises and lease the excess premises to third parties. The court said:

> National banks are precluded by law from engaging in activities which are not related to their banking business. [*citing* 12 U.S.C. 21, 24, 29] A recognized incident to such business is the right of a bank to own its office building and to spread its expenses and operating costs by renting space to tenants. [*citing Brown v. Schleier*]

Wirtz at 644.

More significantly, your letter totally fails to address *Brown v. Schleier*, 118 F. 981, 984 (8th Cir. 1902), *aff'd*, 194 U.S. 18 (1904), the leading case on leasing excess bank premises, which clearly does not require that premises only be developed on property long-held by the bank. In the *Brown* case, a national bank acquired a leasehold interest in real estate and shortly thereafter constructed a building with more space than needed for its banking business. The court said:

> If the land which [a national bank] *purchases or leases* for the accommodation of its business is very valuable, it should be accorded the same rights that belong to other landowners of improving it in a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive.

Brown at 984. (Emphasis added).

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[4] Interpretive Letter No. 1044 also involves property already held by the bank.

Finally, you suggest that OCC Interpretive Letter No. 1045 is inconsistent with the OCC regulation on ownership of property for the temporary lodging of employees because there has been no showing that commercial lodging is not readily available in the relevant area. On this point, I believe you may have simply misread the regulation and may not be familiar with its background. The rule in question, 12 C.F.R. 7.1000(a)(2), provides that "[f]or purposes of 12 U.S.C. 29(First), [bank premises] *includes* ... [listed examples] (Emphasis added). When a regulation provides that activities permitted under a particular statutory authority *include* particular activities, other activities within the scope of the statutory authority that are not listed are not prohibited; it just means that those other activities must be evaluated on a case-by-case basis – as was done here. Thus, your point, that somehow the letter violated the Administrative Procedure Act, is unfounded.

The OCC made clear in both the preamble to the proposed rule, 60 F.R. 11924, 11925 (Mar. 3, 1995), and the preamble to the final rule, 61 F.R. 4849, 4850 (Feb. 9, 1996), that the exemplary list in 7.1000(a)(2) is non-exclusive. Interpretive Letter 1045 specifically reiterated the point that the regulation is not intended to define the limits of bank premises under 12 U.S.C. 29. Moreover, Interpretive Letter 1045 did not base its finding of permissibility upon any of the examples in 7.1000(a)(2). The letter concluded that the proposal was permissible bank premises under 12 U.S.C. 29, without regard to the examples in 7.1000(a)(2). In fact, the letter did describe significant business reasons, *i.e.,* to facilitate both the accommodation of, and the quality of the accommodations necessary for, visiting bank employees, officials, service providers, and customers, to support the establishment of the bank premises.

B. Bank Premises Letter No. 1044

Your letter next takes up Interpretive Letter No. 1044. In this Letter, the OCC concluded that it was a permissible bank premises use for the bank to establish a mixed-use office, hotel and residences facility in these circumstances: the property was already owned by the bank; the proposal would expand the bank's current two-building corporate headquarters complex to three buildings; and the bank represented that it would use approximately 22% of the overall premises of the new building that it would own. You assert that this Letter is inconsistent with prior OCC decisions concerning the level of bank occupancy needed to qualify as bank premises, and that a 1998 OCC approval, Conditional Approval No. 298 (Dec. 15, 1998) ("CA 298"), established the proposition that the OCC has regarded the minimum occupancy level to be much higher than the 22% indicated in this Letter. Both assertions are incorrect.

The determination of whether premises qualify as permissible bank premises involves several inter-related factors, including, but not limited to, the level of bank use of the premises. Neither the OCC nor the courts have established a single occupancy percentage test, and such a one-dimensional standard would be ill-advised since it would ignore the *bona fides* of the transaction in question. Instead, as described above, the establishment of bank facilities must be conducted in good faith in furtherance of the bank's banking business operations, and the burden is on the bank to demonstrate a legitimate business reason based on accommodating its banking business. Looking to the percentage of use or occupancy by a bank is a factor in the analysis.

Your letter misconstrues CA 298 as imposing a minimum requirement. CA 298 analyzed the bank premises issue using the bank's potential minimum occupancy level – 25% – and concluded that "[t]his level of occupancy is sufficient for the office buildings still to be considered bank premises." The phrases from CA 298 that you quote actually serve to underscore that, in terms of bank premises analysis, 25% occupancy is considered *substantial*, not minimal.

In CA 298, the bank initially would occupy 75% of the space in each office building, but represented that its level of occupancy would decrease over time to no less than 25% of each building. Footnote 3, discussing the bank's initial level of usage (75%), states that "[a]t all times, however, the bank will occupy a substantial portion of each office building in the complex." On page 6, in discussing why the bank's investment in an LLC that would construct and own the complex is convenient and useful for the bank, CA 298 stated that the bank "is expected to remain, at all times, a substantial tenant within the complex." Given the bank's representation that at all times it would occupy at least 25% of the space in each building, the "substantial portion" and "substantial tenant" language must refer to 25% – rather than some much higher number, as your letter seems to suggest.

You also assert that another precedent, Interpretive Letter No. 1034 (involving 22% occupancy) cannot be relied upon because it was issued in April 2005 and, therefore, is not long-standing precedent. Interpretive Letter No. 1034 was cited as supportive of several of our conclusions in Interpretive Letter No. 1044. However, nowhere in that letter did we assert that Interpretive Letter No. 1034 was long-standing OCC precedent. Whether Interpretive Letter No. 1034 is long-standing precedent does not diminish its authority for supporting conclusions in Interpretive Letter No. 1044. Moreover, Interpretive Letter No. 1034 cites to many of the same long-standing OCC and judicial precedent to which Interpretive Letters No. 1044 and 1045 cite: CA 298, *Wingert*, *Wirtz*, and *Brown*. To that extent, Interpretive Letter No. 1034 is reflective of long-standing precedent and, therefore, of the OCC's long-standing position.

Your letter further asserts that the development and sale of residential condominiums cannot be equated with cases that permit the sale of excess office space because, unlike office space, residential condominiums are in no way related to the business of a national bank. This contention misses the point that the permissibility of the sale of excess space in section 29 does not depend upon the form, function, or nature of the excess space. Rather, the nature of the development must be consistent with the goal of obtaining needed bank accommodations in a reasonably economical manner.

In Interpretive Letter No. 1044, the bank demonstrated that, in order to establish required office space in an economically feasible manner, it needed to sell a small number of residential condominiums. Indeed, the bank demonstrated that revenue from the sale of 32 condominiums was only one piece of an overall package of revenue and financing incentives necessary for the establishment of the facility. The package also included an important role played by the local and state governments in providing various forms of financing assistance that also were vital to the viability of the facility. Moreover, the bank did not propose to sell an excessive number of units. Rather, the bank commissioned a study to determine whether the market would bear such condominiums, and the bank proposed to sell only the number of condominiums that the market

study concluded would sell promptly. This also was shown by the requirements of the tenant that would lease the excess office (the tenant likely would also purchase one or more condominiums for its use). Taken together, these factors demonstrated that the development and sale of residential condominiums was reasonably related to the development and acquisition of needed bank office space. The fact that residential condominiums are becoming a common addition to downtown office construction further demonstrates this reasonableness.

Even if one were to include the square footage of the residential condominiums in the calculations to determine the bank's percentage analysis of the total building, the bank would be occupying approximately 16.7%, a level of occupancy consistent with *Wingert*. In such a case, however, it seems reasonable to conclude that a bank's sale of excess space in its bank premises building as condominiums is at least as consistent, if not more consistent, with the polices underlying section 29 than would be a bank's retention of the entire building as office space with a lease-out of the excess. Such a sale of excess space as condominiums would better enable the bank to keep its capital flowing in commerce, would prevent speculation as to future real estate values, and would mean that it was holding a smaller amount of property "in mortmain."

Your suggestion that, allowing the sale of 32 units, under the circumstances presented, opens the door for national banks to engage in any type of commercial or residential real estate development ignores the principles that confine national banks' authority to hold and develop bank premises. As discussed above, judicial precedent and OCC interpretations impose standards and limitations for bank premises investments that will prevent general real estate development. Under section 29, the establishment of bank facilities must be conducted in good faith in furtherance of a bank's banking operations, and the burden is on the bank to demonstrate a legitimate business reason based on accommodating its banking business. Here, the bank demonstrated a legitimate business need for the establishment of additional office space and that its method of meeting that need was in good faith.

The Project Financing Letter (Interpretive Letter No. 1048)

In the Project Financing Letter, Interpretive Letter No. 1048, the OCC concluded that is was permissible for a bank to provide financing to a limited liability company that would operate a wind energy project; the limited liability company would hold an interest in associated easements or leaseholds. As presented by the bank, the financing would be substantially identical to a recognized form of extension of credit; the bank would underwrite the financing as it would underwrite a loan to a comparable project; the bank would not become involved in management and operation of the underlying business; and holding the interest in the LLC, which, in turn held property, was essential to the availability of tax credits to the bank and thereby integral to material terms of the financing provided by the bank. Also, the financing was structured such that the bank's holding was not speculative for this fundamental reason: unlike a speculative investment, the bank could not realize a gain or appreciation in real property value since it would not share in any appreciation in the value of the LLC or its underlying assets. OCC's approval expressly relied on the bank's commitment to sell its interest in the LLC at book value at the end of ten years. Precedents recognize that in limited circumstances, a bank may hold an interest in real estate as an integral component of a financing arrangement. This transaction was consistent with those limits.

Your letter argues that the Project Financing Letter is unsupported in law or inconsistent with longstanding OCC precedents or requirements. This is simply not correct. You first assert that the Project Financing Letter is not supported by two precedents it relied upon (OCC Corporate Decision 99-07 and Corporate Decision 98-17). You assert that in both those decisions the banks involved made loans and the terms of the transactions also included use of tax credits. While the transactions did include loans, the point of citing those two decisions was that the banks involved acquired equity-type direct and indirect interests in property (a 99% interest in an LLC (Corporate Decision 99-07) and working interests in gas leases (Corporate Decision 98-17)); these interests enabled the banks to gain the benefit of tax credits; and those tax credits were integral to the overall terms of the package of financing being provided by the banks.

Moreover, both the OCC and the courts have held that permissible loan-equivalent transactions can take different and non-traditional forms in order to accommodate the demands of the market; the economic substance of the transaction, rather than its form, guides the analysis of whether the transaction is a permissible lending activity. The leading case on this is *M & M Leasing Corp. v. Seattle First Nat'l Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (national banks may acquire, own, and lease automobiles and heavy equipment; when the economic characteristics of a lease are substantially similar to a loan, the lease is deemed to be an exercise of the bank's lending powers).

Here, the alternative form of the transaction did not change the fundamental substance of the bank's role as a provider of credit. Other than the form of the interest the bank acquired as the vehicle to provide financing, the transaction addressed in the Project Financing Letter is substantially identical to a loan transaction. The bank represented that its decision whether to enter into the transaction would be based upon a full credit review of the borrower, that the proposed transaction would be made pursuant to the bank's standard loan underwriting criteria, and that the documents governing the transaction would contain many of the same terms, conditions, and covenants typically found in lending and lease financing transactions. Similar to a financing transaction, the bank would be repaid in installments over time. In fact, the form of structured financing for wind energy projects is similar to a production payment loan transaction frequently used in oil and gas lending.

The project financing is structured to permit the lending bank to take advantage of available tax credits in order to reduce the cost of financing to the borrower but still provide a reasonable return for the bank. Notably, your letter does not question the precedent that most resembles the transaction addressed in the Project Financing Letter, where the OCC found a transaction similar in structure to be a permissible loan notwithstanding its surface resemblance to an investment. See Interpretive Letter (November 4, 1994) (available in Lexis-Nexis) (bank provided financing to owners of natural gas leases by acquiring interest in business trust that owned working interests in the leases; acquisition of interest in trust that held leases necessary for the bank to be eligible to receive federal tax credits).[5]

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[5] Under 12 U.S.C. 24(Eleventh), national banks may provide financing for low-income housing development projects by acquiring an equity interest in limited partnerships and limited liability companies that hold and develop the properties. Ownership of the equity interests enables the banks to receive federal tax credits.

Your letter next shifts to argue that the project financing arrangement should not be characterized as a loan because it fails to comply with several supposed requirements that OCC has imposed on lending transactions. On these points, I think you may not recognize that the terms and agreements of the project financing transaction approved in Interpretive Letter No. 1048 provide assurances of repayment that are functionally equivalent to those in a production payment loan.

A production payment loan transaction is a form of lending frequently used in extending credit to the oil and gas industry. These production payment lending transactions, also called "oil/gas reserve based loans" and "oil/gas production loans," are recognized and permitted by the federal banking agencies notwithstanding their special characteristics and risk management issues.

Collection and principal recovery for production payment loans are generally solely dependent on revenue produced by and collateral consisting of oil and gas reserves. The cash flow generated from the sale of oil and gas in the future is the basic premise of such reserve based lending. The bank regulators recognize that the only asset many small independent oil and gas operators have is the oil or gas in the ground and that loans to such operators are based solely upon the predicted cash-flow value of the oil and gas production. Therefore, in such loans, production payments are usually assigned to the bank, as is a collateral interest in the reserve property; the liquidation value of the collateral is expected to be sufficient to pay off the loan. See OCC Banking Circular 215, OCC Examining Circular 223, and FRB Commercial Bank Examination Manual, 2150.1 - Energy Lending - Production Loans. See also, OCC Interpretive Letter (November 4, 1994) (available in Lexis-Nexis). The key point in production payment lending is not whether the bank has imposed an express legal obligation to repay, but rather whether the bank has obtained adequate contractual rights and performed adequate reviews to determine that its loan is likely to be repaid.

Likewise, under the terms of the project financing transaction presented by the bank in Interpretive Letter No. 1048, the bank would have substantially the same assurance of repayment of its principal as it would in an oil/gas production payment loan. However, in order to qualify this transaction for the tax credits, the bank could not impose a traditional form of obligation to repay principal in the agreement with the LLC. Nevertheless, the transaction is on terms that would assure that the funding bank would have a comparable degree of ability to retrieve its principal as it would in a conventional production loan.

Most fundamentally, the Project Financing Letter requires that the bank extend the funds based upon its analysis of the likelihood that the funds would be repaid with a reasonable return. Thus, the decision on whether to provide financing to the company would be based upon a full credit review of the transaction made pursuant to the bank's standard loan underwriting criteria. The agreement would entitle the bank to payments from the LLC of 70% of the revenue from the sale of electricity by the company (plus an equivalent percentage allocation of tax credits), which is expected to result in periodic payments from a long-term production purchase contract with credit-worthy parties. Also, the agreement proposed would contain many of the same terms, conditions, and covenants typically found in lending and lease financing transactions including representations and warranties, conditions precedent to the funding pertaining to the mitigation of risks, covenants requiring the company and other investors to provide the bank with customary financial information, and covenants restricting the company from taking certain

actions.

Moreover, with respect to foreclosure and collateral rights, the bank would be in a similar situation under the project financing as an oil/gas production payment loan. As proposed, the LLC agreement would give the bank many of the rights a production payment lender would have, including the ability to force the sale of the LLC's assets if the project performs poorly or becomes distressed. The bank then would be repaid to the extent of the proceeds from the sale of the assets. Thus, the terms and agreements of the project financing transaction as proposed by the bank provided assurances of repayment that are functionally equivalent to those in a production loan transaction.

Your letter contends next that the lending transaction in the Project Financing Letter is flawed because under the OCC regulation on loan agreements providing for a share in profits or earnings, repayment cannot be conditioned on the profit or income of the business enterprise. This assertion reflects a misunderstanding of the transaction and the regulation and confuses the obligation to repay with the *recourse* available to the bank in the event that repayments are not made as anticipated.

Under 12 C.F.R. 7.1006, a "national bank may take as consideration for a loan a share in the profit, income, or earnings from a business enterprise of a borrower. ... The borrower's obligation to repay principal, however, may not be <u>conditioned upon</u> the value of the profit, income, or earnings of the business enterprise...." (Emphasis added.) In the proposed transaction, the LLC's obligation to repay the financing provided by the bank would not be conditioned upon the value of the profit, income, or earnings of the LLC.

While the source of the actual repayment of the financing will be derived, in part, from the earnings of the wind energy project, the obligation to repay is not conditioned upon the amount or nature of those earnings.

As described above, under the proposal presented by the bank, the bank would have a variety of *remedies* available if a project performs poorly. These remedies are substantively identical to remedies that would be available to a production payment lender. These remedies clearly demonstrate an obligation on the part of the LLC to repay the financing provided by the bank, and such obligation is not conditioned upon the value of the profit, income, or earnings of the wind project borrower. While the financing is nonrecourse as to the LLC, the funds advanced are repayable by the LLC regardless of its profits or revenue. As noted above, under the agreement as proposed, the bank would have the ability to force the sale of the LLC's assets if the project performs poorly or becomes distressed. The bank then would be repaid to the extent of the proceeds from the sale of the assets. Thus, supported by the above-described remedies, including the ability of the bank to secure the liquidation of the LLC, the risk assumed by the bank in this transaction would be the risk ordinarily assumed by lenders generally – that of a borrower's default. Thus, the bank's provision of financing is consistent with both 12 C.F.R. 7.1006 and prior precedent reflecting that rule, including Interpretive Letter No. 244, which your letter cites.

Finally, your letter also seems to contend that the Project Financing Letter is inconsistent with

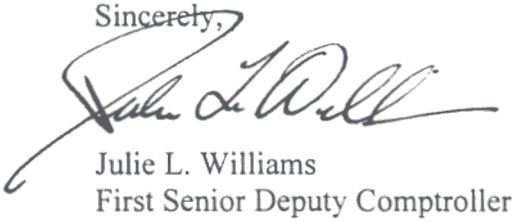
OCC regulations that limit the nature and circumstances under which national banks may extend credit secured by liens on real estate. The basis for this assertion is unclear. Your letter points to the definition of a "loan" in 12 C.F.R. Part 32, which is the OCC's regulation limiting the amount of loans to one borrower. Specifically, you say: "OCC regulations define a 'loan or extension of credit' as 'a bank's direct or indirect advance of funds to or on behalf of a borrower based on the obligation of borrower to repay the funds or repayable from specific property pledged by or on behalf of borrower." 12 C.F.R. 32.2(k).

Here your letter seems to confuse the application of two different rules. The definition in 12 C.F.R. 32.2(k) describes the types of financing arrangements that are subject to the lending limits under 12 U.S.C. 84, which is implemented under 12 C.F.R. Part 32. The lending limit is designed to prevent excessive loans to one person or to related persons that are financially dependent, and to promote loan diversification. 12 C.F.R. 32.1(b). The lending limit definition of a "loan" does not purport to embody the substantive criteria for what constitutes a permissible financial transaction under the National Bank Act, and the OCC has a variety of supervisory tools to address concentrations of credit equivalent exposures that are not with the scope of the lending limit rule.[6]

Conclusion

I sincerely hope the foregoing is helpful to your understanding of the three Letters in question. To reiterate, the Letters have absolutely nothing to do with real estate brokerage. The Letters deal only with limited situations where holding an interest in real estate has long been recognized as permissible for national banks. The Letters absolutely do not open the door for national banks to engage in broad-based real estate development activities, nor do they violate the separation of banking and commerce. If you have any questions, I would welcome the opportunity to provide you with further information.

Sincerely,



Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

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[6] Moreover, we have previously held that the lending limit *does* apply to a closely comparable transaction that we cite as precedent for the Project Financing Letter. See Interpretive Letter (November 4, 1994) (available in Lexis-Nexis). The OCC also has a variety of other supervisory tools available to address concentrations of credit exposures. For example, 12 C.F.R. Part 30, Appendix A, section II.D.5, requires a national bank to establish and maintain prudent credit underwriting practices that "[t]ake adequate account of concentration of credit risk." In addition, the OCC may require higher minimum capital ratios for an individual bank in appropriate circumstances, including significant exposure due to the risks from concentrations in credit. 12 C.F.R. 3.10(d). See also Comptroller's Handbook, "Concentrations of Credit" (March 1990).