

Access National Bank

progressive business banking

May 15, 2012

Office of the Comptroller of the Currency
Attention: Louise Francis, Commercial Credit Technical Expert
250 E Street SW, Mail Stop 2-3
Washington, DC 20219
Via e-mail: regs.comments@occ.treas.gov

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Via e-mail: regs.comments@federalreserve.gov

Robert E. Feldman, Executive Secretary
Attention: Comments/ Legal
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Via e-mail: comments@FDIC.gov

RE: **Proposed Leveraged Lending Guidance**
OCC Docket Number OCC-2011-0028
FRB Docket Number OP—1439

Dear Ladies and Gentlemen:

Like the prior Guidance on this subject, the proposed Guidance is too vague and unclear as to application of the Guidance to particular banks and loan transactions. I have two areas of concern to address:

Applicability to Community Banks

The Guidance could easily be misinterpreted by Examiners to ask a community bank to document and prove why certain transactions are not considered leverage finance as opposed to documenting transactions that clearly are leveraged finance. Unless stated otherwise, the burden of proof that any transaction is NOT leveraged finance will rest with the bank. Therefore all business loans will need to be evaluated on measures that are not presently customary for community banks. As a point of comparison, we have recently seen this type of negative proof documentation applied towards the identification of Troubled Debt Restructurings and find the documentation and burden that results outweigh any potential benefit to effective Supervision, Safety and Soundness.

I propose an exclusion of this Guidance for "community banks" of less than \$10 billion in assets unless the bank's primary federal regulator observes systemic activity that warrants its application. This exclusion is easy to understand and should be simple to enforce should there be a level of activity that warrants application. The Examiners can monitor and probe on this

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subject through the requirement that all banks establish and maintain an effective concentration risk identification and management program.

Definition of Leveraged Finance

As currently proposed, the definition of "Leveraged Finance" as a multiple of debt to EBITDA is inappropriate and will be difficult to apply in any consistent manner.

The lending personnel of most community banks are not equipped to identify leveraged finance under the proposed definition. In most training manuals for commercial lending, the concept of leverage is focused on the balance sheet definitions of leverage, not cash flow leverage.

Most community banks do not evaluate credit in this manner and do not possess the MIS systems to track it. Furthermore, the guidance fails to adequately define how the ratios are measured:

1. Is the leverage ratio applied to historical performance?
2. Is the leverage ratio applied to prospective performance?
3. What if an "off period" triggers the leverage ratio threshold for a business that generally is not considered leveraged?
4. Does this apply to real estate debt that may be capitalized on the balance sheet of an operating business?
5. Does it apply to entities engaged in the trade of real estate ownership or development? These types of businesses do not lend themselves to this type of measure.
6. Does this apply to personal and professional service businesses, such as medical and dental practices, that often have the indicated level of leveraged EBITDA in their formative years and may include real estate debt that is wrapped into permanent working capital?
7. Does this apply to small businesses that are franchisees who enter the franchise business with this indicated level of cash flow leverage?

I recommend that you consider exclusions in the revised definition such as:

1. Loan Size – the loan must be in excess of some level, perhaps \$10 or \$20 million;
2. Loans that carry a government guaranty such as programs offered by the SBA, USDA, and the DOE or other forms of credit enhancement that represent self-evident collateral such as cash securities or letters of credit issued by a creditworthy counter-party;
3. Real Estate – any loan or business that contains real estate as a primary component of the collateral; and
4. Collateral – the loan is deemed to be adequately secured by assets actively used in the trade or business and the collateral or secondary source of repayment is not the "enterprise value" of the business. In other words, a loan must contain an "air ball" component that is significant in relation to the credit in order for the loan to be considered "leveraged finance".

If you need any clarification of these comments, please contact me via e-mail or phone at 703-871-2100.

We appreciate your efforts to ensure a safe and sound banking system.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Clarke', with a stylized, flowing script.

Michael Clarke
President and CEO