



NATIONAL ASSOCIATION
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The Voice for Real Estate®

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Thomas M. Stevens, CRB, CRS, GRI
President

February 7, 2006

The Honorable John W. Snow
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Secretary:

On behalf of more than 1.2 million members of the National Association of REALTORS® (NAR), I am writing to request an opportunity to meet with you to discuss several regulatory initiatives that we believe represent a significant challenge to maintenance of one of our nation's most fundamental economic policies—the separation of banking and commerce.

The National Association of REALTORS®, “The Voice for Real Estate,” is America's largest trade association, including NAR's five commercial real estate affiliates. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,500 local associations or boards, and 54 state and territory associations of REALTORS®.

Recent OCC Rulings Expanding Bank Authority To Engage in Real Estate Development

NAR is extremely concerned about three recent rulings issued by the Office of the Comptroller of the Currency (OCC) that expand the authority of national banks to invest in real estate projects involving the development of office buildings, hotels, residential condominiums, and windmill farms.¹ In our view, this expansion of bank powers is inconsistent with the National Bank Act, OCC regulations, and previous OCC rulings concerning the types of real estate activities permitted for national banks. The new

¹ OCC Interpretive Letter No. 1044 (December 5, 2005); OCC Interpretive Letter No. 1045 (December 5, 2005); OCC Interpretive Letter No. 1048 (December 21, 2005).



rulings represent another leap forward in the OCC's continued effort to dramatically expand the real estate powers of national banks and undermine the national policy requiring the separation of banking and commerce. Numerous banking experts see the OCC's actions as a significant expansion of real estate powers of national banks.² Indeed, two former Comptrollers, Eugene Ludwig and John D. Hawke, Jr., have publicly acknowledged that the OCC letters move the bar.³

The OCC's course of action poses a significant threat to the safety and soundness of the entire banking system, financial markets, and the U.S. economy. The savings and loan scandal of the 1980s and the sluggish Japanese economy, where banks are intertwined with real estate and commercial enterprises, are dramatic examples of the negative consequences of mixing banking and commerce. We do not want to repeat past mistakes, and we should learn from the mistakes of others.

The inevitable result of the OCC's actions will be authorization of national banks—and, through “wild card” statutes, many state banks—to become actively involved in real estate development and brokerage activities. We believe such authorization would defy the intent of Congress. By passing legislation each year barring issuance of the final Treasury-Fed rule that would permit financial holding companies and financial subsidiaries to engage in real estate brokerage and management, Congress is clearly stating its view that banking organizations must not be permitted to engage in these activities. If Congress does not want banks to engage in real estate brokerage or management, it is inconceivable that it intends to permit national banks to engage in real estate development, which is a much riskier activity.

We have asked the OCC to reconsider its rulings and to take no future actions that would expand bank powers to engage in real estate development. We are also urging Congress to conduct hearings and take action to address the OCC's continued efforts that breach the wall separating banking and commerce and threaten to destabilize the nation's banking system.

The Comptroller carries out his or her duties “under the general directions of the Secretary of the Treasury.”⁴ Considering the significance of the public policy involved, we believe this would be an appropriate case for you to request the Comptroller to reassess these recent rulings and assure that bank authority to engage in real estate development is interpreted narrowly to prevent the risks described above.

² “Banks Might Widen Real-Estate Role,” *Wall Street Journal* (January 9, 2006); “OCC Moved the Line on Realty in UBOC Letter,” *American Banker* (January 11, 2006). “Tough Enforcement Belie Effort to Expand Bank Powers,” *Financial Services Policy Bulletin*, Stanford Washington Research Group (January 25, 2006). “Will Banks Become Land Developers?” *CNN Money* (January 9, 2006) at http://money.cnn.com/2006/01/09/news/companies/banks_real_estate.

³ “In Focus: Firm, But Not Specific, On Banks in Real Estate,” *American Banker* (January 23, 2006).

⁴ 12 U.S.C. § 1.

Federal Reserve Board-Treasury Department Proposed Rule on Real Estate Brokerage and Management

We have strongly disagreed with the Treasury Department decision more than five years ago to publish, jointly with the Federal Reserve Board, a proposed rule that would allow financial holding companies and financial subsidiaries to engage in real estate brokerage and real estate management. In our view, these activities are purely commercial, not financial, activities. The fact that banks are involved in real estate financing and other related activities cannot be a basis for concluding that real estate brokerage and management activities are financial or related to financial activities. Such false reasoning leads to the conclusion that banking organizations may broker any product whose sale they may finance—appliances, automobiles, airplanes, artwork, etc. The Gramm-Leach-Bliley Act permits banks to broker securities. The difference is that securities are financial instruments. Permitting banking organizations to engage in real estate brokerage activities raises inherent conflict of interest and unlevel playing field problems that exist with respect to permitting commercial firms to control banks.

We have continued to urge Congress to enact legislation reaffirming the long-standing national policy against mixing banking and commerce by permanently prohibiting banking organizations from engaging in real estate brokerage and management activities. NAR now urges the Treasury Department to join with the Federal Reserve Board to withdraw the proposed rule and permit this matter to be debated and decided by Congress, where all such important public policy issues should be determined.

Wal-Mart's ILC Application

NAR is deeply concerned about the pending application from Wal-Mart Stores, Inc. for an industrial loan company (ILC) charter from Utah. Wal-Mart's application for federal deposit insurance for its ILC is now pending before the Federal Deposit Insurance Corporation (FDIC). This marks the latest chapter in Wal-Mart's continuing effort to gain a foothold entry into the banking industry. We hope you share our concern about the risks of permitting Wal-Mart to control a bank, even one whose powers are limited. When commercial firms are allowed to engage in banking, the bank functions under an inherent and irreconcilable conflict of interest. The bank's commercial parent will undoubtedly use the bank in a manner that furthers the corporate objectives of the company, which may be at odds with what is in the best interests of the bank subsidiary, customers, competitors, and our financial system. Banks must be "honest brokers" of financial services and must not be swayed into making credit and other business decisions based on their affiliation with commercial firms. Moreover, a commercial company that controls a bank has an unfair advantage due to federal subsidies, such as cheap access to capital as a result of the existence of the federal deposit insurance safety net. Banks are also the only entities that have access to the Federal Reserve's discount window and payment system. These advantages create an unlevel playing field when banks compete with commercial firms.

Numerous banking organizations and bank trade associations have strenuously opposed the Wal-Mart ILC application on the basis that permitting commercial firms to own banks will result in an impermissible mixing of banking and commerce. NAR agrees with the banking industry's opposition to the Wal-Mart ILC application. However, the banking industry is taking hypocritical positions by opposing commercial companies entering the banking business while at the same time seeking to expand permissible bank activities into real estate brokerage and real estate development—activities which by their very nature are commercial. The irreconcilable clash of commercial and banking industries over these activity issues in different regulatory forums should compel the Treasury to support NAR's efforts to have Congress resolve these issues through the legislative process.

We strongly believe that Wal-Mart's effort to obtain a federally-insured ILC, if successful, will establish a dangerous precedent that will inevitably lead to an erosion of the separation of banking and commerce and have serious consequences for the continued stability and growth of the nation's financial system. Accordingly, we ask that you oppose Wal-Mart's pending application for federal deposit insurance for its proposed ILC and urge the members of the FDIC Board to vote against approval.

Our staffs have already been in touch to arrange a meeting. In addition to the issues raised by this letter, I look forward to discussing the state of the nation's housing market, the recommendations of the President's Advisory Panel on Federal Tax Reform, and any other matters of mutual concern.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tom Stevens". The signature is written in a cursive, flowing style.

Thomas M. Stevens, CRB, CRS, GRI
2006 President, National Association of REALTORS®