Comptroller of the Currency
Administrator of National Banks

Quarterly Journal

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VOLUME NINETEEN

Office of the Comptroller of the Currency
March 2000

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Background

The Office of the Comptroller of the Currency (OCC) was established in 1863 as a bureau of the Department of the Treasury. The OCC is headed by the Comptroller, who is appointed by the President, with the advice and consent of the Senate, for a five-year term.

The OCC regulates national banks by its power to:

- Examine the banks;
- Approve or deny applications for new charters, branches, capital, or other changes in corporate or banking structure;
- Take supervisory actions against banks that do not conform to laws and regulations or that otherwise engage in unsound banking practices, including removal of officers, negotiation of agreements to change existing banking practices, and issuance of cease and desist orders; and
- Issue rules and regulations concerning banking practices and governing bank lending and investment practices and corporate structure.

The OCC divides the United States into six geographical districts, with each headed by a deputy comptroller.

The OCC is funded through assessments on the assets of national banks, and federal branches and agencies. Under the International Banking Act of 1978, the OCC regulates federal branches and agencies of foreign banks in the United States.

The Comptroller

Comptroller John D. Hawke Jr. has held office as the 28th Comptroller of the Currency since December 8, 1998, after being appointed by President Clinton during a congressional recess. He was confirmed subsequently by the United States Senate for a five-year term starting on October 13, 1999. Prior to his appointment Mr. Hawke served for 3½ years as Under Secretary of the Treasury for Domestic Finance. He oversaw development of policy and legislation on financial institutions, debt management, and capital markets; served as chairman of the Advanced Counterfeit Deterrence Steering Committee; and was a member of the board of the Securities Investor Protection Corporation. Before joining Treasury, he was a senior partner at the Washington, D.C. law firm of Arnold & Porter, which he joined as an associate in 1962. In 1975 he left to serve as general counsel to the Board of Governors of the Federal Reserve System, returning in 1978. At Arnold & Porter he headed the financial institutions practice. From 1987 to 1995 he was chairman of the firm.

Mr. Hawke has written extensively on the regulation of financial institutions, including *Commentaries on Banking Regulation,* published in 1985. From 1970 to 1987 he taught courses on federal regulation of banking at Georgetown University Law Center. He has also taught courses on bank acquisitions and serves as chairman of the Board of Advisors of the Morin Center for Banking Law Studies. In 1987 Mr. Hawke served on a committee of inquiry appointed by the Chicago Mercantile Exchange to study the role of futures markets in the October 1987 stock market crash. He was a founding member of the Shadow Financial Regulatory Committee, and served on it until joining Treasury.

Mr. Hawke was graduated from Yale University in 1954 with a B.A. in English. From 1955 to 1957 he served on active duty with the U.S. Air Force. After graduating in 1960 from Columbia University School of Law, where he was editor-in-chief of the *Columbia Law Review,* Mr. Hawke clerked for Judge E. Barrett Prettyman on the U.S. Court of Appeals for the District of Columbia Circuit. From 1961 to 1962 he was counsel to the Select Subcommittee on Education, U.S. House of Representatives.

The *Quarterly Journal* is the journal of record for the most significant actions and policies of the Office of the Comptroller of the Currency. It is published four times a year. The *Quarterly Journal* includes policy statements, decisions on banking structure, selected speeches and congressional testimony, material released in the interpretive letters series, statistical data, and other information of interest to the administration of national banks. Send suggestions or questions to Rebecca Miller, Senior Writer-Editor, Communications Division, Comptroller of the Currency, Washington, DC 20219. Subscriptions are available for $100 a year by writing to Publications—QJ, Comptroller of the Currency, P.O. Box 70004, Chicago, IL 60673–0004. The *Quarterly Journal* is on the Web at http://www.occ.treas.gov/qj/qj.htm.

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Office of the Comptroller of the Currency

John D. Hawke Jr.

Comptroller of the Currency

The Administrator of National Banks

Volume 19, Number 1
March 2000

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Condition and Performance of Commercial Banks

Fourth Quarter Summary

Buoyed by strong growth in the U.S. economy, earnings of the banking industry remained strong in the fourth quarter 1999 and reached a record level for the year. Earnings in the fourth quarter 1999 were $17.8 billion, up from $14.8 billion in the fourth quarter a year ago, but down $1.7 billion from the third quarter 1999. Return on assets (ROA) for banks improved to 1.27 percent in the fourth quarter 1999 from 1.10 percent for the fourth quarter 1998, a period when merger-related effects and international events depressed bank earnings.

Annual dollar net income grew at the fastest percentage rate since 1993, up 16 percent to a record $72 billion. Noninterest income continued to be the fastest growing source of operating revenue, at an annual rate of growth above 15 percent, while operating efficiency improved, and loss provisions remained low. Of note, net interest margin for the aggregate industry was unchanged in 1999 compared with 1998, after five consecutive years of margin compression.

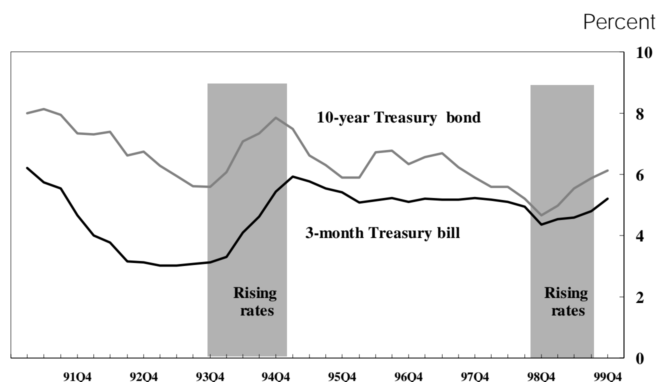
In contrast to the performance of the aggregate industry, small banks continued to feel a squeeze on earnings. Return on assets for the almost 5,200 banks with under $100 million in assets (representing 60 percent of commercial banks) declined to 1.01 percent in 1999, compared to 1.13 percent in 1998. This is the lowest level of small bank ROA since the recession period of 1991. While net interest margin stabilized in 1999 for the industry as a whole, net interest margin continued to decline for small banks. In 1999, net interest margin for banks under $100 million fell 7 basis points from the 1998 level and 20 basis points from 1997 level. The ratio of noninterest income to average assets at small banks declined from 1998 to 1999, while provisions increased.

Rising Interest Rate Environment

Although 1999 was a period of strong U.S. economic growth, it was also a period of steadily rising interest rates as the Federal Reserve attempted to moderate economic growth to relieve potential inflationary pressures. Since rising interest rates are generally viewed by investors and banking analysts as negative for banks, the possibility of further interest rate increases in 2000 raises questions regarding the banking industry's level of future earnings. In 1999 and the previous rising rate environment of 1994, rising rates had a mixed effect on bank earnings. The major risk to banks is that, in the longer term, rising rates may cause a slow-down in the economy, leading to a decrease in net interest income as loan volume shrinks, and an increase in loss provisioning as problem loans increase.

As shown in Figure 1, the U.S. economy has had two periods of generally rising interest rates in the 1990s. In the 12 months of 1999, the three-month Treasury bill rose 83 basis points, while the 10-year Treasury bond increased 147 basis points, widening the spread between these two instruments from 30 basis points to 94 basis points. By comparison, in the 12 months of 1994, the three-month Treasury bill rose 231 basis points, while the 10-year Treasury bond increased 224 basis points. Although the spread between these instruments increased to almost 300 basis points during 1994, the spread narrowed considerably by December 1995 to 48 basis points.

Figure 1—Interest rates rising and spread between long and short rates increasing



Source: Haver Analytics

The interest rate rises in both 1999 and 1994 were closely contemporaneous with consecutive increases in the federal funds rate by the Federal Reserve to reduce the possibility of

overheating in the economy. Rising rates in 1994 dampened real GDP growth from 6.0 percent in the fourth quarter 1993 to 0.8 percent in the second quarter 1995. In contrast, rising rates in 1999 have yet to slow the economy as of year-end, as fourth quarter real GDP growth reached a year high of 6.9 percent.

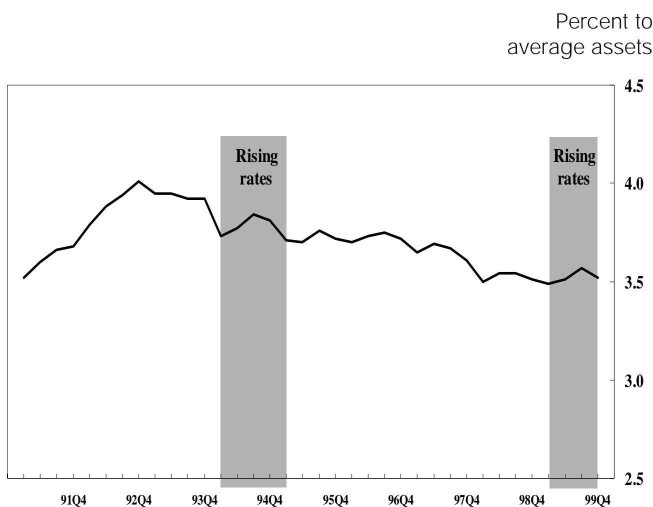
Many banking analysts and investors view rising interest rates as threatening to bank profitability. First, rising rates are likely to raise the costs of bank liabilities, including both deposits and borrowed money, which could reduce net interest margin. Second, rising rates are likely to reduce loan growth. Third, rising rates if accompanied by a sharp slowdown in the economy are likely to coincide with increasing borrower defaults and an increase in loan losses. Fourth, rising rates are likely to reduce the value of securities held by banks and profits from the sale of securities.

With these possible effects in mind, how have rising rates actually affected banks during the current 1999 period of rising rates, as well as in the most recent rising rate period of 1994?

Net Interest Margin

Net interest margin has been in a generally declining trend since 1992. As shown in Figure 2, net interest margin reached a high of 4.01 percent in the fourth quarter of 1992. During the following seven years, the aggregate banking industry has experienced a gradual compression in net interest margin, falling 52 basis points to 3.49 percent by the first quarter 1999, as competitive pressures in credit markets accumulated.

Figure 2—Net interest margin (commercial banks)

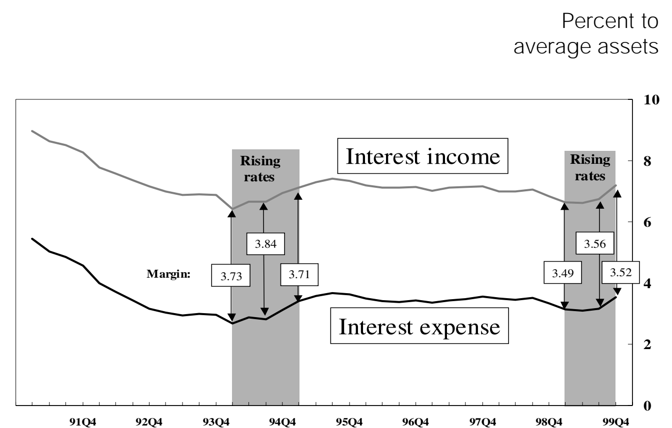


Source: Integrated Banking Information System

In the course of this longer-term decline in net interest margin in banks, the rising interest rate environments of 1994 and 1999 had an effect of temporarily raising margins. As shown in Figure 3, net interest margin initially increased from rising interest rates in both 1994 and 1999. During the first two quarters in both 1994 and 1999, net interest margin increased by eleven and seven basis points, respectively. During both periods, interest income adjusted more quickly to rising interest rates, widening the spread between interest income and interest expense.

After the initial increase, however, net interest margin fell as interest expense caught up. By the first quarter 1995, net interest margin had fallen 13 basis points during the preceding six-month period to 3.71 percent. In the three-month period available since the third quarter 1999, net interest margin has also fallen proportionally.

Figure 3—Interest income initially rose faster in a rising rate environment (commercial banks)



Source: Integrated Banking Information System

This temporary effect occurred as loan rates increased more quickly than deposit rates initially, followed by a period in which deposit rates caught up. For example, between March and September 1999, the growth in rates on mortgages outpaced the increase in certificates of deposit. Rates on 30-year mortgages increased 100 basis points, while rates on 1-year and 5-year CDs increased 40 and 69 basis points, respectively. In the subsequent six-month period between September 1999 and March 2000, rates on CDs outpaced mortgage rates. Rates on 1-year and 5-year CDs increased by 58 and 66 basis points respectively, while rates on 30-year mortgages increased by 44 basis points.

This temporarily beneficial effect occurred not only for banks in the aggregate, but also across a broad cross-section of individual banks. During 1994, the percentage of banks with increases in net interest margin (NIM) temporarily grew and decreases in NIM temporarily shrank. By 1995, the percentage of banks with increases and decreases in NIM had returned to the same pattern of NIM increases and decreases that existed in 1993.

At the same time, many individual banks were adversely affected by rising rates. Eight percent of banks reported a decline in net interest margin of greater than 45 basis points between the fourth quarter of 1998 and the fourth quarter in 1999, when most banks were reporting an improvement in NIM.

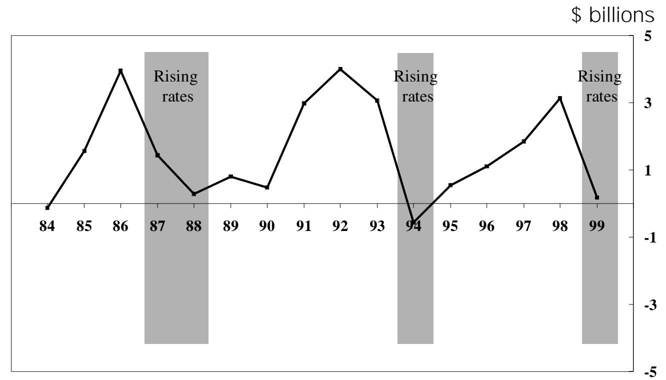
The fact that these patterns in 1994 and 1999 appear similar does not argue that banks have the same exposure to changes in interest rates in 1999 as they did in 1994. As one example, the ratio of long-term assets to total assets in commercial banks increased between 1994 and 1999, from 13.6 percent to 20.6 percent. Over the same period, the ratio of nonmaturity deposits (e.g., checking accounts and MMAs) to assets decreased from 39.7 percent to 34.0 percent. Other major changes in banking affecting interest rate exposure include other changes in the composition of bank balance sheets, development and spread to new tools for measuring interest rate risk, increased asset securitization, and new tools and awareness of hedging.

Gains and Losses on Securities

While the effect of rising rates on the net interest margin of banks in 1994 and 1999 appeared to be temporary and moderate, rising rates had a more dramatic effect on the securities portfolio of banks.

As shown in Figure 4, the gain from sale of securities was significantly reduced during the 1994 and 1999 periods of rising rates. During the 1994 rising rate period, realized gains on sale of securities declined from $3.1 billion in 1993 to a loss of $0.5 billion in 1994. Realized gains on sale of securities declined from $3.1 billion in 1998 to $0.2 billion in 1999. On a quarterly basis, commercial banks reported only five quarters of losses on sales of securities during the 1990s, which occurred in 1994–95 and 1999. In the fourth quarter 1999, commercial banks reported losses on sales of securities of $276 million compared to a loss of $197 million in the third quarter.

Figure 4—Realized securities gains/losses (commercial banks)

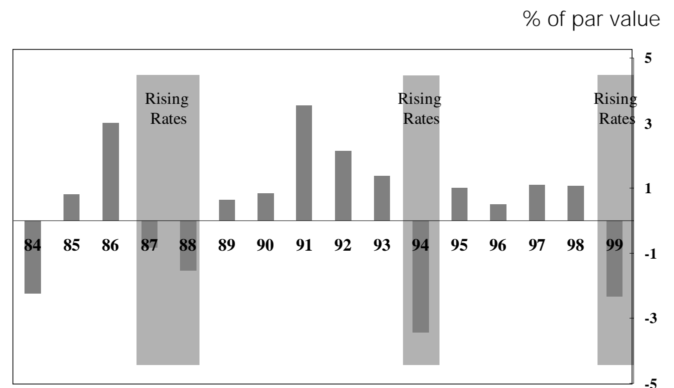


Source: Integrated Banking Information System

However, the effect of these changes on the profitability of banks was relatively small. Gain on sales of securities was only 1 percent of operating revenue in 1998 and less in 1999.

A second important result of rising interest rates is a decline in the value of securities held by banks. As shown in Figure 5, banks reported a significant decline in value from unrealized losses on securities during periods of rising rates. In 1994, securities declined to 3.4 percent below par value. In 1999, securities declined 2.3 percent below par value.

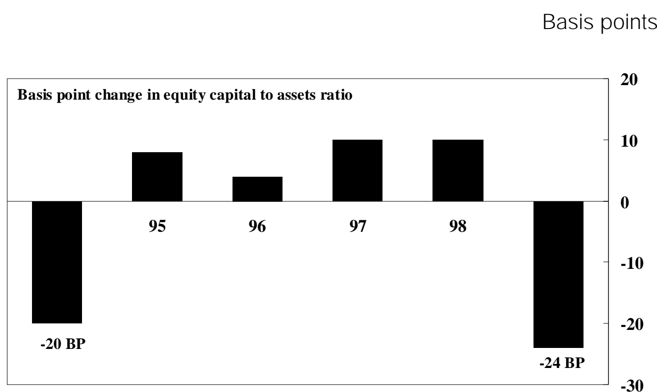
Figure 5—Unrealized securities gains/losses (commercial banks)



Source: Integrated Banking Information System

Although unrealized gains/losses on securities do not affect bank income statements and therefore bank profitability, gains/losses on available-for-sale securities do affect bank capital. As shown in Figure 6, equity capital decreased in 1994 and 1999 as the result of unrealized losses on available-for-sale securities. Although interest rates have not increased in 1999 as much as in 1994, the effect on capital was greater in 1999 than in 1994 because the percentage of securities available for sale (AFS) by banks was higher in 1999 than in 1994. In large part because of accounting changes, the percentage of securities held in available-for-sale inventory increased from 48 percent in 1994 to 86 percent in 1999.

Figure 6—Change in equity capital ratio from net unrealized gains/losses on AFS securities (commercial banks)



Note: AFS means "available for sale."

Source: Integrated Banking Information System

During the 1990s, the ratio of equity capital to assets declined only twice: in 1994 and in 1999, showing the effect of unrealized losses on available-for-sale securities. The equity capital-to-assets ratio in 1999 was 8.37 percent, down from 8.49 percent in 1998, but up from 7.78 percent in 1994.

During 1999, 511 commercial banks (6 percent of the industry) had a decrease in their equity capital-to-asset ratio of 100 basis points or more attributable to net unrealized gains of AFS securities. Of these banks, 63 had an equity capital ratio less than 6 percent as of year-end 1999.

Longer-Term Effects

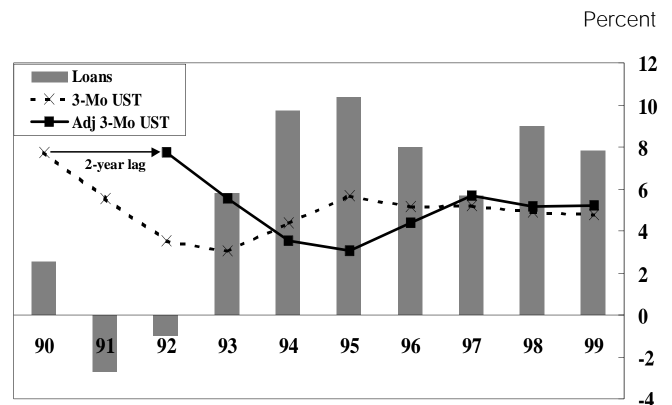
Changes in net interest margin and valuation of securities are two effects of rising interest rates that can be felt relatively immediately by banks in rising interest rate environments. In the 1994 and 1999 rising rate experience, they had a relatively minor impact on the aggregate profitability of banks.

In addition to these immediate effects, banks experience other longer-term effects as the consequence of rising interest rates on the economy, including the possibility for a decrease in loan volume and an increase in borrower defaults. The severity of the impact on banking depends on the extent to which rising rates affect the larger economy. The interest rate rises in 1994–1995, while having a dampening influence, were generally offset by the continued strong growth in economic activity and low inflation.

Rising rates have a lagged effect on the economy broadly and subsequent loan growth in banks. As shown in Figure 7, loan growth accelerated during the early 1990s in part in response to the falling interest rates following the 1990–1991 recession. Loan growth began to moderate in 1996 following interest rate increases beginning in 1994. Figure 7 shows the lagged effect that changes in interest rates have on rates of loan growth.

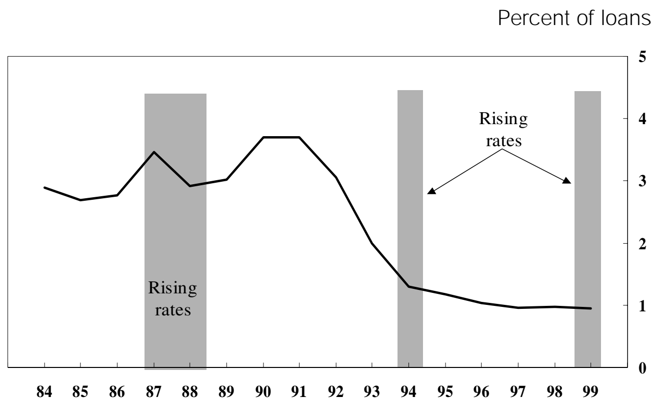
The effects of rising interest rates on the profitability of banks can be offset by a strong economy. As Figure 8 shows, credit quality has improved dramatically since the recession of 1990–1991, as the strength of the U.S. economy offset the possible development of problem loans resulting from the rising rate environments of 1994 and 1999. On a quarterly basis, the dollar amount of noncurrent loans, however, did increase in the fourth quarter 1999, reaching the highest dollar level since the fourth quarter of 1994.

Figure 7—Loan growth responds with lag to interest rates (commercial banks)



Source: Integrated Banking Information System; Haver Analytics

Figure 8—Noncurrent loans (commercial banks)



Source: Integrated Banking Information System

Conclusion

The banking industry reported record profitability in 1999, although small banks reported a decline in profits. Growth of noninterest income accelerated, operating efficiency improved, loss provisions remained low, and net interest margin stabilized. The strong performance of the banking industry reflected the strong growth of the U.S. economy.

The rising interest rate environment of 1999 and the possibility of further interest rate increases in 2000, however, pose questions regarding whether the industry's profitability can be sustained at its current high level. Experience during 1999 and the previous rising rate environment of 1994 suggests that rising rates can have a mixed effect on banks. Rising rates can cause a small and temporary rise in bank net interest margin. On the other hand, rising rates reduce income from the sale of securities and can reduce equity capital from unrealized losses in available for sale securities.

However, the major risk to banks is that, in the longer term, rising rates may cause a significant slowdown in the economy rather than a "soft landing," leading to lower earnings from reduced loan volume and an increase in loss provisioning to address an increase in problem loans.

Key indicators, FDIC-insured national banks
Annual 1995–1998, year-to-date through December 31, 1999, fourth quarter 1998, and fourth quarter 1999
(Dollar figures in millions)

	1995	1996	1997	1998	Preliminary 1999YTD	1998Q4	Preliminary 1999Q4
Number of institutions reporting	2,858	2,726	2,597	2,456	2,365	2,456	2,365
Total employees (FTEs)	840,699	850,737	912,463	974,871	982,243	974,871	982,243
Selected income data ($)							
Net income	$28,583	$30,497	$35,782	$37,623	$42,673	$8,803	$10,133
Net interest income	87,080	94,564	106,639	110,985	114,535	28,802	29,093
Provision for loan losses	6,335	9,598	13,065	15,243	15,471	3,775	4,088
Noninterest income	51,080	56,100	65,429	81,347	92,722	23,043	24,994
Noninterest expense	87,591	93,690	104,682	122,582	125,847	35,740	34,406
Net operating income	28,540	30,095	34,993	35,564	42,494	8,303	10,161
Cash dividends declared	20,516	25,279	28,587	25,415	29,876	7,311	8,639
Net charge-offs to loan and lease reserve	6,459	9,968	12,661	14,492	14,160	3,934	3,944
Selected condition data ($)							
Total assets	2,401,017	2,528,057	2,893,910	3,183,324	3,271,469	3,183,324	3,271,469
Total loans and leases	1,522,677	1,641,464	1,840,485	2,015,562	2,128,124	2,015,562	2,128,124
Reserve for losses	31,142	31,992	34,865	36,810	37,628	36,810	37,628
Securities	390,549	380,615	452,118	516,084	537,050	516,084	537,050
Other real estate owned	3,396	2,761	2,112	1,833	1,571	1,833	1,571
Noncurrent loans and leases	17,595	17,223	17,878	19,516	20,798	19,516	20,798
Total deposits	1,695,817	1,801,043	2,004,867	2,137,946	2,154,437	2,137,946	2,154,437
Domestic deposits	1,406,312	1,525,565	1,685,316	1,785,856	1,776,290	1,785,856	1,776,290
Equity capital	189,714	207,166	244,795	274,209	278,111	274,209	278,111
Off-balance-sheet derivatives	7,914,818	7,488,663	8,704,481	10,953,514	12,077,568	10,953,514	12,077,568
Performance ratios (annualized %)							
Return on equity	15.76	15.28	15.00	14.30	15.60	12.92	14.72
Return on assets	1.24	1.25	1.29	1.24	1.35	1.13	1.26
Net interest income to assets	3.78	3.88	3.83	3.67	3.63	3.70	3.62
Loss provision to assets	0.27	0.39	0.47	0.50	0.49	0.48	0.51
Net operating income to assets	1.24	1.24	1.26	1.18	1.35	1.07	1.26
Noninterest income to assets	2.22	2.30	2.35	2.69	2.94	2.96	3.11
Noninterest expense to assets	3.80	3.85	3.76	4.05	3.99	4.59	4.28
Loss provision to loans and leases	0.44	0.61	0.73	0.79	0.76	0.76	0.78
Net charge-offs to loans and leases	0.45	0.63	0.71	0.75	0.70	0.79	0.76
Loss provision to net charge-offs	98.09	96.29	103.19	105.12	109.26	96.29	103.67
Performance ratios (%)							
Percent of institutions unprofitable	3.32	4.77	4.89	5.94	6.85	10.91	9.60
Percent of institutions with earnings gains	66.83	67.83	67.96	61.69	62.62	53.05	60.59
Nonint. income to net operating revenue	36.97	37.24	38.02	42.30	44.74	44.45	46.21
Nonint. expense to net operating revenue	63.40	62.18	60.84	63.73	60.72	68.94	63.61
Condition ratios (%)							
Nonperforming assets to assets	0.88	0.80	0.70	0.68	0.70	0.68	0.70
Noncurrent loans to loans	1.16	1.05	0.97	0.97	0.98	0.97	0.98
Loss reserve to noncurrent loans	176.99	185.75	195.01	188.62	180.92	188.62	180.92
Loss reserve to loans	2.05	1.95	1.89	1.83	1.77	1.83	1.77
Equity capital to assets	7.90	8.19	8.46	8.61	8.50	8.61	8.50
Leverage ratio	7.31	7.40	7.42	7.43	7.50	7.43	7.50
Risk-based capital ratio	12.09	11.95	11.84	11.79	11.73	11.79	11.73
Net loans and leases to assets	62.12	63.66	62.39	62.16	63.90	62.16	63.90
Securities to assets	16.27	15.06	15.62	16.21	16.42	16.21	16.42
Appreciation in securities (% of par)	0.86	0.50	1.11	0.82	–2.46	0.82	–2.46
Residential mortgage assets to assets	20.13	19.81	20.10	20.41	20.60	20.41	20.60
Total deposits to assets	70.63	71.24	69.28	67.16	65.86	67.16	65.86
Core deposits to assets	53.28	54.08	51.59	49.72	47.01	49.72	47.01
Volatile liabilities to assets	30.29	29.83	31.42	31.77	34.81	31.77	34.81

Loan performance, FDIC-insured national banks
Annual 1995–1998, year-to-date through December 31, 1999, fourth quarter 1998, and fourth quarter 1999
(Dollar figures in millions)

	1995	1996	1997	1998	Preliminary 1999YTD	1998Q4	Preliminary 1999Q4
Percent of loans past due 30–89 days							
Total loans and leases	1.26	1.39	1.32	1.27	1.16	1.27	1.16
Loans secured by real estate (RE)	1.38	1.45	1.39	1.33	1.22	1.33	1.22
1–4 family residential mortgages	1.44	1.63	1.65	1.50	1.61	1.50	1.61
Home equity loans	1.19	1.04	0.93	0.97	0.77	0.97	0.77
Multifamily residential mortgages	1.15	1.28	1.33	0.94	0.69	0.94	0.69
Commercial RE loans	1.26	1.25	0.95	1.02	0.70	1.02	0.70
Construction RE loans	1.42	1.63	1.63	1.82	1.07	1.82	1.07
Commercial and industrial loans*	0.77	0.89	0.76	0.81	0.71	0.81	0.71
Loans to individuals	2.16	2.46	2.52	2.44	2.36	2.44	2.36
Credit cards	2.35	2.70	2.75	2.52	2.53	2.52	2.53
Installment loans	2.04	2.26	2.34	2.37	2.24	2.37	2.24
All other loans and leases	0.40	0.41	0.46	0.46	0.50	0.46	0.50
Percent of loans noncurrent							
Total loans and leases	1.16	1.05	0.97	0.97	0.98	0.97	0.98
Loans secured by real estate (RE)	1.46	1.27	1.07	0.98	0.87	0.98	0.87
1–4 family residential mortgages	0.90	1.10	1.01	0.95	0.91	0.95	0.91
Home equity loans	0.52	0.47	0.43	0.41	0.28	0.41	0.28
Multifamily residential mortgages	2.21	1.47	1.01	0.88	0.44	0.88	0.44
Commercial RE loans	2.18	1.71	1.27	1.01	0.85	1.01	0.85
Construction RE loans	3.17	1.31	1.00	0.80	0.64	0.80	0.64
Commercial and industrial loans*	1.06	0.87	0.78	0.86	1.11	0.86	1.11
Loans to individuals	1.18	1.34	1.49	1.59	1.51	1.59	1.51
Credit cards	1.34	1.70	2.03	2.06	1.99	2.06	1.99
Installment loans	1.06	1.04	1.04	1.19	1.16	1.19	1.16
All other loans and leases	0.32	0.25	0.27	0.31	0.40	0.31	0.40
Percent of loans charged-off, net							
Total loans and leases	0.45	0.63	0.71	0.75	0.70	0.79	0.76
Loans secured by real estate (RE)	0.13	0.09	0.06	0.05	0.10	0.08	0.13
1–4 family residential mortgages	0.10	0.08	0.08	0.07	0.14	0.08	0.17
Home equity loans	0.23	0.24	0.18	0.16	0.19	0.15	0.19
Multifamily residential mortgages	0.20	0.09	0.01	0.07	0.02	–0.04	0.06
Commercial RE loans	0.18	0.02	–0.01	–0.02	0.03	0.06	0.03
Construction RE loans	–0.01	0.16	–0.10	–0.01	0.03	0.00	0.03
Commercial and industrial loans*	0.10	0.22	0.27	0.38	0.54	0.55	0.72
Loans to individuals	1.80	2.45	2.86	2.92	2.65	2.99	2.76
Credit cards	3.40	4.25	4.95	5.03	4.51	4.99	4.67
Installment loans	0.76	1.04	1.20	1.23	1.27	1.36	1.42
All other loans and leases	–0.07	0.09	0.07	0.40	0.23	0.23	0.29
Loans outstanding ($)							
Total loans and leases	$1,522,677	$1,641,464	$1,840,485	$2,015,562	$2,128,124	$2,015,562	$2,128,124
Loans secured by real estate (RE)	610,405	646,570	725,305	764,869	853,173	764,869	853,173
1–4 family residential mortgages	317,521	329,031	363,329	381,521	433,832	381,521	433,832
Home equity loans	48,836	55,022	67,669	66,091	67,269	66,091	67,269
Multifamily residential mortgages	18,161	20,480	23,346	23,201	26,557	23,201	26,557
Commercial RE loans	157,638	170,350	190,067	200,469	214,175	200,469	214,175
Construction RE loans	34,736	38,848	47,410	56,261	71,562	56,261	71,562
Farmland loans	8,734	9,046	10,178	10,930	11,954	10,930	11,954
RE loans from foreign offices	24,779	23,794	23,306	26,396	27,825	26,396	27,825
Commercial and industrial loans	405,630	425,148	508,589	583,929	622,092	583,929	622,092
Loans to individuals	320,009	356,067	371,477	386,410	348,556	386,410	348,556
Credit cards	131,228	161,104	168,236	176,408	147,091	176,408	147,091
Installment loans	188,781	194,963	203,241	210,003	201,465	210,003	201,465
All other loans and leases	189,490	216,194	237,326	282,393	306,194	282,393	306,194
Less: Unearned income	2,857	2,515	2,212	2,039	1,892	2,039	1,892

*Includes "All other loans" for institutions under $1 billion in asset size.

Key indicators, FDIC-insured national banks by asset size
Fourth quarter 1998 and fourth quarter 1999
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	1998Q4	1999Q4	1998Q4	1999Q4	1998Q4	1999Q4	1998Q4	1999Q4
Number of institutions reporting	1,267	1,203	998	985	148	131	43	46
Total employees (FTEs)	32,393	31,753	106,822	107,289	149,657	119,190	685,999	724,011
Selected income data ($)								
Net income	$165	$164	$776	$909	$1,463	$1,470	$6,400	$7,590
Net interest income	643	629	2,595	2,734	5,090	3,879	20,473	21,850
Provision for loan losses	56	48	272	276	1,182	589	2,266	3,175
Noninterest income	539	498	1,242	1,485	4,518	2,996	16,744	20,015
Noninterest expense	898	850	2,477	2,796	6,217	3,991	26,147	26,769
Net operating income	162	166	760	781	1,435	1,548	5,946	7,666
Cash dividends declared	263	230	752	820	1,287	1,690	5,008	5,899
Net charge-offs to loan and lease reserve	40	39	220	240	1,096	598	2,578	3,067
Selected condition data ($)								
Total assets	63,373	60,596	258,944	263,738	466,292	393,476	2,394,715	2,553,660
Total loans and leases	35,471	35,335	154,834	164,518	295,001	247,347	1,530,254	1,680,925
Reserve for losses	480	467	2,250	2,388	7,194	5,103	26,887	29,671
Securities	17,005	16,507	70,205	68,326	94,619	90,860	334,254	361,357
Other real estate owned	71	63	229	206	185	161	1,348	1,142
Noncurrent loans and leases	380	327	1,308	1,308	3,057	2,068	14,771	17,095
Total deposits	54,032	51,300	212,832	210,845	301,207	254,691	1,569,874	1,637,600
Domestic deposits	54,032	51,300	212,394	210,350	297,591	251,933	1,221,839	1,262,708
Equity capital	6,981	6,526	24,436	24,639	46,925	38,180	195,866	208,767
Off-balance-sheet derivatives	502	27	3,194	2,490	52,106	40,612	11,062,666	12,089,802
Performance ratios (annualized %)								
Return on equity	9.49	10.03	12.70	14.74	12.59	15.55	13.15	14.72
Return on assets	1.06	1.10	1.22	1.39	1.29	1.52	1.09	1.21
Net interest income to assets	4.14	4.21	4.09	4.19	4.50	4.01	3.49	3.49
Loss provision to assets	0.36	0.32	0.43	0.42	1.05	0.61	0.39	0.51
Net operating income to assets	1.04	1.11	1.20	1.20	1.27	1.60	1.01	1.22
Noninterest income to assets	3.47	3.33	1.96	2.27	3.99	3.10	2.86	3.19
Noninterest expense to assets	5.78	5.68	3.90	4.28	5.50	4.13	4.46	4.27
Loss provision to loans and leases	0.63	0.55	0.71	0.68	1.64	0.97	0.60	0.77
Net charge-offs to loans and leases	0.45	0.45	0.57	0.59	1.52	0.98	0.68	0.75
Loss provision to net charge-offs	140.23	122.28	123.67	115.30	107.87	98.48	88.31	103.53
Performance ratios (%)								
Percent of institutions unprofitable	15.71	14.30	5.11	4.67	10.81	4.58	4.65	6.52
Percent of institutions with earnings gains	48.38	56.86	57.82	64.57	57.43	64.12	65.12	63.04
Nonint. income to net operating revenue	45.59	44.17	32.37	35.20	47.02	43.57	44.99	47.81
Nonint. expense to net operating revenue	76.00	75.38	64.55	66.28	64.71	58.05	70.26	63.94
Condition ratios (%)								
Nonperforming assets to assets	0.71	0.64	0.59	0.58	0.70	0.58	0.68	0.73
Noncurrent loans to loans	1.07	0.93	0.84	0.79	1.04	0.84	0.97	1.02
Loss reserve to noncurrent loans	126.15	142.57	172.00	182.60	235.34	246.76	182.03	173.56
Loss reserve to loans	1.35	1.32	1.45	1.45	2.44	2.06	1.76	1.77
Equity capital to assets	11.02	10.77	9.44	9.34	10.06	9.70	8.18	8.18
Leverage ratio	10.73	10.92	9.01	9.24	8.73	8.75	6.92	7.04
Risk-based capital ratio	18.28	18.10	14.79	14.75	13.20	13.29	11.18	11.17
Net loans and leases to assets	55.22	57.54	58.93	61.47	61.72	61.57	62.78	64.66
Securities to assets	26.83	27.24	27.11	25.91	20.29	23.09	13.96	14.15
Appreciation in securities (% of par)	0.99	–2.12	1.10	–2.41	0.89	–2.25	0.73	–2.53
Residential mortgage assets to assets	21.89	21.43	25.63	25.09	24.64	26.24	18.99	19.25
Total deposits to assets	85.26	84.66	82.19	79.95	64.60	64.73	65.56	64.13
Core deposits to assets	74.00	72.78	70.91	68.24	56.37	55.94	45.50	42.83
Volatile liabilities to assets	12.61	14.26	16.14	18.96	26.17	27.59	35.05	38.05

Loan performance, FDIC-insured national banks by asset size
Fourth quarter 1998 and fourth quarter 1999
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	1998Q4	1999Q4	1998Q4	1999Q4	1998Q4	1999Q4	1998Q4	1999Q4
Percent of loans past due 30–89 days								
Total loans and leases	1.53	1.27	1.32	1.15	1.66	1.29	1.18	1.14
Loans secured by real estate (RE)	1.37	1.09	1.11	0.86	1.26	0.96	1.38	1.34
1–4 family residential mortgages	1.72	1.53	1.42	1.17	1.26	1.16	1.56	1.75
Home equity loans	0.76	0.52	0.84	0.59	1.09	0.77	0.96	0.79
Multifamily residential mortgages	0.56	0.98	0.61	0.56	0.83	0.39	1.04	0.78
Commercial RE loans	1.03	0.65	0.77	0.57	1.00	0.64	1.08	0.75
Construction RE loans	1.38	0.78	1.06	0.69	2.37	1.24	1.83	1.11
Commercial and industrial loans*	2.39	2.12	1.55	1.40	1.22	1.03	0.70	0.63
Loans to individuals	2.32	2.01	2.17	2.22	2.50	2.22	2.45	2.41
Credit cards	2.49	2.53	2.86	3.90	2.48	2.30	2.53	2.53
Installment loans	2.31	1.98	2.00	1.77	2.54	2.14	2.39	2.33
All other loans and leases	NA	NA	NA	NA	0.85	0.93	0.44	0.48
Percent of loans noncurrent								
Total loans and leases	1.07	0.93	0.84	0.79	1.04	0.84	0.97	1.02
Loans secured by real estate (RE)	0.91	0.75	0.68	0.59	0.76	0.65	1.09	0.96
1–4 family residential mortgages	0.81	0.63	0.67	0.58	0.78	0.68	1.04	1.00
Home equity loans	0.48	0.40	0.33	0.26	0.54	0.37	0.39	0.27
Multifamily residential mortgages	0.60	0.68	0.36	0.31	0.79	0.34	1.01	0.48
Commercial RE loans	0.93	0.74	0.73	0.66	0.81	0.77	1.14	0.92
Construction RE loans	0.84	0.59	0.54	0.34	0.63	0.37	0.90	0.76
Commercial and industrial loans*	2.59	2.34	1.50	1.40	0.75	0.84	0.81	1.10
Loans to individuals	0.73	0.64	0.87	1.05	1.60	1.29	1.67	1.63
Credit cards	1.49	1.41	2.20	3.11	1.95	1.85	2.13	1.98
Installment loans	0.69	0.60	0.54	0.50	0.93	0.70	1.35	1.37
All other loans and leases	NA	NA	NA	NA	0.51	0.40	0.30	0.40
Percent of loans charged-off, net								
Total loans and leases	0.45	0.45	0.57	0.59	1.52	0.98	0.68	0.7
Loans secured by real estate (RE)	0.07	0.08	0.07	0.07	0.10	0.11	0.07	0.14
1–4 family residential mortgages	0.08	0.06	0.07	0.07	0.12	0.17	0.07	0.19
Home equity loans	0.01	–0.04	0.10	0.10	0.31	0.12	0.13	0.21
Multifamily residential mortgages	0.01	0.05	0.01	0.05	0.07	–0.02	–0.08	0.08
Commercial RE loans	0.08	0.07	0.09	0.08	0.05	0.07	0.05	0.01
Construction RE loans	0.05	0.39	0.03	0.03	0.03	0.03	–0.02	0.01
Commercial and industrial loans*	1.38	1.60	0.99	0.91	0.51	1.16	0.52	0.66
Loans to individuals	1.18	0.96	2.13	2.34	3.94	2.70	2.73	2.86
Credit cards	3.87	2.31	6.47	8.14	5.54	4.44	4.58	4.55
Installment loans	0.99	0.89	1.08	0.70	1.08	0.98	1.48	1.63
All other loans and leases	NA	NA	NA	NA	0.41	0.39	0.22	0.29
Loans outstanding ($)								
Total loans and leases	$35,471	$35,335	$154,834	$164,518	$295,001	$247,347	$1,530,254	$1,680,925
Loans secured by real estate (RE)	19,985	20,152	92,775	99,764	119,802	119,451	532,307	613,805
1–4 family residential mortgages	9,889	9,519	43,570	45,123	60,514	57,299	267,549	321,891
Home equity loans	425	425	3,933	4,179	9,181	7,462	52,553	55,203
Multifamily residential mortgages	452	458	2,938	3,376	4,063	4,387	15,747	18,336
Commercial RE loans	5,565	5,830	31,052	34,445	33,778	36,094	130,074	137,806
Construction RE loans	1,417	1,582	7,524	8,621	10,602	12,370	36,717	48,988
Farmland loans	2,237	2,338	3,735	4,002	1,484	1,642	3,474	3,972
RE loans from foreign offices	0	0	25	18	179	197	26,192	27,610
Commercial and industrial loans	6,103	6,036	28,149	29,053	54,016	49,885	495,662	537,119
Loans to individuals	5,189	5,011	24,308	25,807	103,096	62,422	253,817	255,316
Credit cards	282	258	4,799	5,405	67,443	32,050	103,884	109,379
Installment loans	4,907	4,753	19,509	20,403	35,653	30,372	149,933	145,937
All other loans and leases	4,331	4,230	9,956	10,175	18,191	15,672	249,915	276,117
Less: Unearned income	136	94	353	282	104	83	1,446	1,434

*Includes "All other loans" for institutions under $1 billion in asset size.

Key indicators, FDIC-insured national banks by region
Fourth quarter 1999
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Number of institutions reporting	262	330	478	470	581	244	2,365
Total employees (FTEs)	268,354	303,818	162,365	75,174	72,173	100,359	982,243
Selected income data ($)							
Net income	$2,182	$3,598	$1,759	$923	$496	$1,176	$10,133
Net interest income	7,458	9,313	4,563	2,553	2,038	3,168	29,093
Provision for loan losses	1,599	834	423	478	230	525	4,088
Noninterest income	8,627	6,209	3,246	2,087	864	3,961	24,994
Noninterest expense	11,115	9,375	4,722	2,628	1,841	4,725	34,406
Net operating income	2,188	3,482	1,763	988	578	1,162	10,161
Cash dividends declared	1,503	2,222	1,692	683	613	1,927	8,639
Net charge-offs to loan and lease reserve	1,295	1,096	431	448	192	482	3,944
Selected condition data ($)							
Total assets	848,546	1,096,055	566,287	255,432	211,299	293,850	3,271,469
Total loans and leases	541,383	706,588	383,120	178,460	123,290	195,285	2,128,124
Reserve for losses	11,703	11,240	5,380	3,034	1,595	4,676	37,628
Securities	124,152	182,034	94,048	40,593	52,500	43,724	537,050
Other real estate owned	546	466	159	82	125	193	1,571
Noncurrent loans and leases	7,533	6,068	3,072	1,419	1,131	1,574	20,798
Total deposits	565,902	704,956	359,138	164,241	162,836	197,364	2,154,437
Domestic deposits	340,424	617,318	317,605	157,393	160,825	182,725	1,776,290
Equity capital	68,426	94,360	44,611	21,610	17,402	31,701	278,111
Off-balance-sheet derivatives	4,197,190	6,343,416	1,210,612	32,838	26,748	266,764	12,077,568
Performance ratios (annualized %)							
Return on equity	12.83	15.46	15.80	17.57	11.43	15.05	14.72
Return on assets	1.05	1.33	1.26	1.48	0.95	1.65	1.26
Net interest income to assets	3.59	3.43	3.28	4.10	3.91	4.45	3.62
Loss provision to assets	0.77	0.31	0.30	0.77	0.44	0.74	0.51
Net operating income to assets	1.05	1.28	1.27	1.59	1.11	1.63	1.26
Noninterest income to assets	4.16	2.29	2.33	3.35	1.66	5.56	3.11
Noninterest expense to assets	5.36	3.46	3.39	4.22	3.53	6.63	4.28
Loss provision to loans and leases	1.21	0.48	0.45	1.11	0.76	1.10	0.78
Net charge-offs to loans and leases	0.98	0.63	0.46	1.04	0.63	1.01	0.76
Loss provision to net charge-offs	123.48	76.06	98.18	106.54	119.82	109.05	103.67
Performance ratios (%)							
Percent of institutions unprofitable	6.49	17.27	6.90	6.60	9.98	12.70	9.60
Percent of institutions with earnings gains	60.69	58.79	62.55	58.94	59.72	64.34	60.59
Nonint. income to net operating revenue	53.63	40.00	41.57	44.97	29.76	55.56	46.21
Nonint. expense to net operating revenue	69.11	60.40	60.46	56.64	63.45	66.28	63.61
Condition ratios (%)							
Nonperforming assets to assets	0.98	0.60	0.59	0.60	0.59	0.65	0.70
Noncurrent loans to loans	1.39	0.86	0.80	0.80	0.92	0.81	0.98
Loss reserve to noncurrent loans	155.36	185.23	175.11	213.75	141.03	297.03	180.92
Loss reserve to loans	2.16	1.59	1.40	1.70	1.29	2.39	1.77
Equity capital to assets	8.06	8.61	7.88	8.46	8.24	10.79	8.50
Leverage ratio	7.37	7.27	7.39	7.85	7.77	8.48	7.50
Risk-based capital ratio	12.09	11.30	11.48	11.89	12.84	11.99	11.73
Net loans and leases to assets	62.42	63.44	66.70	68.68	57.59	64.87	63.90
Securities to assets	14.63	16.61	16.61	15.89	24.85	14.88	16.42
Appreciation in securities (% of par)	–1.24	–3.51	–2.32	–1.77	–2.75	–1.99	–2.46
Residential mortgage assets to assets	13.48	27.35	19.61	20.72	22.27	16.63	20.60
Total deposits to assets	66.69	64.32	63.42	64.30	77.06	67.16	65.86
Core deposits to assets	33.32	49.18	48.35	55.42	66.10	54.84	47.01
Volatile liabilities to assets	46.01	32.55	35.05	27.04	22.15	26.32	34.81

Loan performance, FDIC-insured national banks by region
Fourth quarter 1999
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Percent of loans past due 30–89 days							
Total loans and leases	1.20	1.08	1.21	1.30	1.08	1.14	1.16
Loans secured by real estate (RE)	1.36	1.33	1.22	0.96	1.02	0.88	1.22
1–4 family residential mortgages	1.74	1.78	1.39	1.04	1.31	1.52	1.61
Home equity loans	0.71	0.87	0.87	0.67	0.64	0.47	0.77
Multifamily residential mortgages	1.15	0.44	1.12	0.87	0.58	0.31	0.69
Commercial RE loans	0.63	0.58	1.02	0.82	0.72	0.46	0.70
Construction RE loans	0.52	0.97	1.52	1.07	1.17	0.96	1.07
Commercial and industrial loans*	0.53	0.61	0.84	1.17	1.01	0.86	0.71
Loans to individuals	2.61	2.21	2.43	2.42	1.54	2.21	2.36
Credit cards	2.76	2.09	2.22	2.65	0.92	2.26	2.53
Installment loans	2.39	2.25	2.47	2.13	1.57	2.11	2.24
All other loans and leases	0.35	0.28	0.84	0.69	0.66	0.71	0.50
Percent of loans noncurrent							
Total loans and leases	1.39	0.86	0.80	0.80	0.92	0.81	0.98
Loans secured by real estate (RE)	1.34	0.84	0.78	0.57	0.91	0.54	0.87
1–4 family residential mortgages	1.15	0.96	0.85	0.48	0.69	0.71	0.91
Home equity loans	0.32	0.24	0.35	0.28	0.28	0.22	0.28
Multifamily residential mortgages	0.91	0.33	0.48	0.23	0.44	0.40	0.44
Commercial RE loans	1.10	0.79	0.90	0.72	1.25	0.49	0.85
Construction RE loans	0.66	0.80	0.54	0.51	0.57	0.46	0.64
Commercial and industrial loans*	1.26	1.06	1.02	0.86	1.45	0.99	1.11
Loans to individuals	2.51	0.87	0.84	1.33	0.45	1.31	1.51
Credit cards	2.35	1.42	1.22	1.85	0.53	1.78	1.99
Installment loans	2.75	0.70	0.77	0.66	0.45	0.39	1.16
All other loans and leases	0.33	0.40	0.46	0.49	0.39	0.40	0.40
Percent of loans charged-off, net							
Total loans and leases	0.98	0.63	0.46	1.04	0.63	1.01	0.76
Loans secured by real estate (RE)	0.12	0.13	0.12	0.17	0.12	0.09	0.13
1–4 family residential mortgages	0.09	0.15	0.24	0.28	0.20	0.25	0.17
Home equity loans	0.22	0.22	0.19	0.17	0.55	0.03	0.19
Multifamily residential mortgages	0.42	0.03	–0.02	0.01	0.01	–0.01	0.06
Commercial RE loans	–0.09	0.07	0.04	0.03	0.07	0.00	0.03
Construction RE loans	–0.11	0.12	–0.06	0.03	0.03	0.00	0.03
Commercial and industrial loans*	0.50	0.99	0.44	0.67	0.96	0.83	0.72
Loans to individuals	3.28	2.50	1.66	3.47	1.36	3.29	2.76
Credit cards	4.36	6.08	4.02	5.48	2.75	4.25	4.67
Installment loans	1.79	1.43	1.21	0.95	1.30	1.46	1.42
All other loans and leases	0.33	0.17	0.29	0.38	0.47	0.39	0.29
Loans outstanding ($)							
Total loans and leases	$541,383	$706,588	$383,120	$178,460	$123,290	$195,285	$2,128,124
Loans secured by real estate (RE)	151,163	340,939	156,417	73,107	51,615	79,931	853,173
1–4 family residential mortgages	76,248	202,250	70,030	37,213	21,099	26,992	433,832
Home equity loans	12,766	24,281	16,634	4,323	1,010	8,255	67,269
Multifamily residential mortgages	3,000	10,353	5,703	2,104	1,770	3,627	26,557
Commercial RE loans	27,656	72,070	46,593	19,203	19,282	29,371	214,175
Construction RE loans	6,045	26,348	14,495	7,254	6,815	10,606	71,562
Farmland loans	489	2,805	2,939	3,011	1,640	1,070	11,954
RE loans from foreign offices	24,958	2,833	23	0	0	10	27,825
Commercial and industrial loans	170,741	214,243	109,444	43,849	34,594	49,222	622,092
Loans to individuals	121,245	68,796	53,164	39,174	23,552	42,625	348,556
Credit cards	71,853	16,103	8,166	21,923	928	28,118	147,091
Installment loans	49,391	52,693	44,997	17,251	22,625	14,507	201,465
All other loans and leases	99,154	83,075	64,217	22,355	13,681	23,713	306,194
Less: Unearned income	920	465	123	26	153	206	1,892

*Includes "All other loans" for institutions under $1 billion in asset size.

Key indicators, FDIC-insured commercial banks
Annual 1995–1998, year-to-date through December 31, 1999, fourth quarter 1998, and fourth quarter 1999

(Dollar figures in millions)

	1995	1996	1997	1998	Preliminary 1999YTD	1998Q4	Preliminary 1999Q4
Number of institutions reporting	9,940	9,527	9,142	8,774	8,580	8,774	8,580
Total employees (FTEs)	1,484,42	11,489,186	1,538,408	1,627,050	1,656,508	1,627,050	1,656,508
Selected income data ($)							
Net income	$48,745	$52,350	$59,159	$61,800	$71,703	$14,781	$17,763
Net interest income	154,210	162,754	174,507	182,758	192,204	47,022	49,248
Provision for loan losses	12,603	16,285	19,851	22,218	21,713	5,808	6,144
Noninterest income	82,426	93,569	104,498	123,700	144,456	34,649	38,827
Noninterest expense	149,729	160,698	169,982	194,117	204,176	54,950	54,758
Net operating income	48,396	51,510	57,931	59,245	71,465	14,063	17,741
Cash dividends declared	31,053	38,791	42,540	41,005	51,927	12,648	16,343
Net charge-offs to loan and lease reserve	12,202	15,500	18,318	20,731	20,340	5,801	6,019
Selected condition data ($)							
Total assets	4,312,676	4,578,314	5,014,951	5,441,055	5,734,843	5,441,055	5,734,843
Total loans and leases	2,602,963	2,811,279	2,970,742	3,238,331	3,491,359	3,238,331	3,491,359
Reserve for losses	52,838	53,458	54,685	57,274	58,757	57,274	58,757
Securities	810,872	800,648	871,868	979,704	1,046,171	979,704	1,046,171
Other real estate owned	6,063	4,780	3,795	3,150	2,792	3,150	2,792
Noncurrent loans and leases	30,351	29,130	28,542	31,252	33,000	31,252	33,000
Total deposits	3,027,574	3,197,136	3,421,726	3,681,444	3,830,776	3,681,444	3,830,776
Domestic deposits	2,573,480	2,723,556	2,895,532	3,109,410	3,175,187	3,109,410	3,175,187
Equity capital	349,571	375,270	417,778	462,169	479,875	462,169	479,875
Off-balance-sheet derivatives	16,860,614	20,035,444	25,063,799	33,005,109	34,816,882	33,005,109	34,816,882
Performance ratios (annualized %)							
Return on equity	14.66	14.45	14.69	13.93	15.34	12.86	15.03
Return on assets	1.17	1.19	1.23	1.19	1.31	1.10	1.27
Net interest income to assets	3.71	3.70	3.64	3.51	3.51	3.51	3.52
Loss provision to assets	0.30	0.37	0.41	0.43	0.40	0.43	0.44
Net operating income to assets	1.16	1.17	1.21	1.14	1.30	1.05	1.27
Noninterest income to assets	1.98	2.13	2.18	2.37	2.64	2.59	2.77
Noninterest expense to assets	3.60	3.65	3.54	3.73	3.73	4.11	3.91
Loss provision to loans and leases	0.51	0.61	0.69	0.72	0.65	0.73	0.72
Net charge-offs to loans and leases	0.49	0.58	0.64	0.67	0.61	0.73	0.70
Loss provision to net charge-offs	103.28	105.07	108.37	104.87	106.75	98.50	102.08
Performance ratios (%)							
Percent of institutions unprofitable	3.55	4.28	4.85	6.12	7.24	12.31	11.21
Percent of institutions with earnings gains	67.53	70.78	68.38	61.25	63.11	54.25	60.92
Nonint. income to net operating revenue	34.83	36.50	37.45	40.36	42.91	42.42	44.08
Nonint. expense to net operating revenue	63.27	62.69	60.92	63.34	60.65	67.28	62.17
Condition ratios (%)							
Nonperforming assets to assets	0.85	0.75	0.66	0.65	0.63	0.65	0.63
Noncurrent loans to loans	1.17	1.04	0.96	0.97	0.95	0.97	0.95
Loss reserve to noncurrent loans	174.09	183.51	191.59	183.27	178.05	183.27	178.05
Loss reserve to loans	2.03	1.90	1.84	1.77	1.68	1.77	1.68
Equity capital to assets	8.11	8.20	8.33	8.49	8.37	8.49	8.37
Leverage ratio	7.61	7.64	7.56	7.54	7.80	7.54	7.80
Risk-based capital ratio	12.68	12.53	12.23	12.23	12.16	12.23	12.16
Net loans and leases to assets	59.13	60.24	58.15	58.46	59.86	58.46	59.86
Securities to assets	18.80	17.49	17.39	18.01	18.24	18.01	18.24
Appreciation in securities (% of par)	1.01	0.51	1.10	1.07	–2.31	1.07	–2.31
Residential mortgage assets to assets	20.31	19.79	20.03	20.93	20.77	20.93	20.77
Total deposits to assets	70.20	69.83	68.23	67.66	66.80	67.66	66.80
Core deposits to assets	53.47	52.45	50.06	49.40	46.96	49.40	46.96
Volatile liabilities to assets	29.68	30.71	31.92	31.68	34.94	31.68	34.94

Loan performance, FDIC-insured commercial banks
Annual 1995–1998, year-to-date through December 31, 1999, fourth quarter 1998, and fourth quarter 1999
(Dollar figures in millions)

	1995	1996	1997	1998	Preliminary 1999YTD	1998Q4	Preliminary 1999Q4
Percent of loans past due 30–89 days							
Total loans and leases	1.29	1.37	1.31	1.26	1.14	1.26	1.14
Loans secured by real estate (RE)	1.38	1.41	1.33	1.26	1.09	1.26	1.09
1–4 family residential mortgages	1.53	1.57	1.59	1.44	1.43	1.44	1.43
Home equity loans	1.09	1.06	0.96	0.98	0.75	0.98	0.75
Multifamily residential mortgages	0.99	1.19	1.11	0.86	0.58	0.86	0.58
Commercial RE loans	1.21	1.24	0.97	0.99	0.69	0.99	0.69
Construction RE loans	1.41	1.58	1.42	1.50	0.98	1.50	0.98
Commercial and industrial loans*	0.86	0.95	0.83	0.88	0.80	0.88	0.80
Loans to individuals	2.21	2.50	2.50	2.43	2.33	2.43	2.33
Credit cards	2.40	2.76	2.73	2.58	2.59	2.58	2.59
Installment loans	2.08	2.31	2.33	2.33	2.17	2.33	2.17
All other loans and leases	0.37	0.37	0.51	0.51	0.55	0.51	0.55
Percent of loans noncurrent							
Total loans and leases	1.17	1.04	0.96	0.97	0.95	0.97	0.95
Loans secured by real estate (RE)	1.39	1.20	1.01	0.91	0.79	0.91	0.79
1–4 family residential mortgages	0.88	0.99	0.94	0.88	0.82	0.88	0.82
Home equity loans	0.52	0.48	0.44	0.42	0.31	0.42	0.31
Multifamily residential mortgages	1.99	1.35	0.95	0.83	0.42	0.83	0.42
Commercial RE loans	2.02	1.61	1.21	0.95	0.77	0.95	0.77
Construction RE loans	2.75	1.38	0.97	0.81	0.67	0.81	0.67
Commercial and industrial loans*	1.19	0.98	0.86	0.99	1.18	0.99	1.18
Loans to individuals	1.22	1.36	1.47	1.52	1.42	1.52	1.42
Credit cards	1.58	1.91	2.18	2.22	2.05	2.22	2.05
Installment loans	0.97	0.97	0.98	1.06	1.03	1.06	1.03
All other loans and leases	0.30	0.22	0.25	0.34	0.39	0.34	0.39
Percent of loans charged-off, net							
Total loans and leases	0.49	0.58	0.64	0.67	0.61	0.73	0.70
Loans secured by real estate (RE)	0.18	0.10	0.06	0.05	0.08	0.08	0.11
1–4 family residential mortgages	0.11	0.08	0.08	0.07	0.11	0.08	0.14
Home equity loans	0.20	0.20	0.16	0.14	0.15	0.13	0.16
Multifamily residential mortgages	0.32	0.15	0.04	0.05	0.01	–0.01	0.07
Commercial RE loans	0.32	0.09	0.01	0.00	0.03	0.06	0.05
Construction RE loans	0.22	0.19	–0.02	0.01	0.04	0.04	0.07
Commercial and industrial loans*	0.25	0.26	0.28	0.42	0.57	0.63	0.79
Loans to individuals	1.73	2.28	2.70	2.69	2.32	2.79	2.41
Credit cards	3.40	4.35	5.11	5.19	4.45	5.26	4.49
Installment loans	0.66	0.89	1.04	1.04	1.04	1.17	1.20
All other loans and leases	–0.02	0.06	0.08	0.39	0.26	0.21	0.39
Loans outstanding ($)							
Total loans and leases	$2,602,963	$2,811,279	$2,970,742	$3,238,331	$3,491,359	$3,238,331	$3,491,359
Loans secured by real estate (RE)	1,080,116	1,139,018	1,244,985	1,345,568	1,509,758	1,345,568	1,509,758
1–4 family residential mortgages	546,808	570,122	620,599	668,677	736,793	668,677	736,793
Home equity loans	79,182	85,300	98,163	96,647	102,347	96,647	102,347
Multifamily residential mortgages	35,788	38,162	41,231	43,241	53,121	43,241	53,121
Commercial RE loans	298,533	315,989	341,522	370,550	417,475	370,550	417,475
Construction RE loans	68,696	76,399	88,242	106,722	135,568	106,722	135,568
Farmland loans	23,907	24,964	27,072	29,096	31,897	29,096	31,897
RE loans from foreign offices	27,202	28,083	28,157	30,635	32,558	30,635	32,558
Commercial and industrial loans	661,417	709,600	794,998	898,662	971,129	898,662	971,129
Loans to individuals	535,348	562,291	561,329	570,876	558,465	570,876	558,465
Credit cards	216,016	231,664	231,096	228,781	211,961	228,781	211,961
Installment loans	319,332	330,626	330,233	342,095	346,505	342,095	346,505
All other loans and leases	331,934	405,678	373,898	427,258	455,677	427,258	455,677
Less: Unearned income	5,853	5,308	4,469	4,032	3,670	4,032	3,670

*Includes "All other loans" for institutions under $1 billion in asset size.

Key indicators, FDIC-insured commercial banks by asset size
Fourth quarter 1998 and fourth quarter 1999
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	1998Q4	1999Q4	1998Q4	1999Q4	1998Q4	1999Q4	1998Q4	1999Q4
Number of institutions reporting	5,409	5,157	2,973	3,029	321	318	71	76
Total employees (FTEs)	116,247	109,804	298,876	303,699	296,597	279,096	915,330	963,909
Selected income data ($)								
Net income	$515	$523	$2,126	$2,455	$3,043	$3,186	$9,097	$11,599
Net interest income	2,543	2,495	7,443	7,869	9,530	8,971	27,507	29,913
Provision for loan losses	232	190	770	717	1,690	1,240	3,117	3,997
Noninterest income	1,010	861	2,849	3,177	7,062	6,046	23,727	28,742
Noninterest expense	2,622	2,450	6,526	6,989	10,403	8,834	35,398	36,485
Net operating income	504	531	2,082	2,334	2,974	3,284	8,503	11,591
Cash dividends declared	679	646	1,782	2,195	2,963	3,738	7,225	9,764
Net charge-offs to loan and lease reserve	175	151	598	555	1,599	1,145	3,430	4,168
Selected condition data ($)								
Total assets	252,380	242,544	726,770	754,570	921,689	915,204	3,540,217	3,822,525
Total loans and leases	145,329	145,407	440,167	481,894	587,669	580,211	2,065,165	2,283,847
Reserve for losses	2,112	2,055	6,605	7,000	11,983	10,561	36,574	39,140
Securities	67,111	65,187	195,196	188,950	200,542	215,690	516,854	576,344
Other real estate owned	289	276	732	670	497	438	1,632	1,408
Noncurrent loans and leases	1,499	1,305	3,747	3,638	6,024	4,787	19,982	23,271
Total deposits	215,922	205,943	600,817	611,581	632,719	624,687	2,231,986	2,388,565
Domestic deposits	215,886	205,929	599,037	609,717	619,040	612,280	1,675,446	1,747,261
Equity capital	27,644	25,915	69,190	69,869	87,236	83,214	278,099	300,876
Off-balance-sheet derivatives	752	195	9,017	8,209	110,041	94,650	33,260,407	34,780,165
Performance ratios (annualized %)								
Return on equity	7.47	8.04	12.36	14.06	14.08	15.51	13.14	15.73
Return on assets	0.83	0.87	1.19	1.32	1.36	1.42	1.04	1.25
Net interest income to assets	4.12	4.17	4.18	4.23	4.25	4.01	3.15	3.22
Loss provision to assets	0.38	0.32	0.43	0.38	0.75	0.55	0.36	0.43
Net operating income to assets	0.82	0.89	1.17	1.25	1.33	1.47	0.97	1.25
Noninterest income to assets	1.64	1.44	1.60	1.71	3.15	2.70	2.71	3.09
Noninterest expense to assets	4.25	4.10	3.67	3.75	4.64	3.94	4.05	3.93
Loss provision to loans and leases	0.64	0.53	0.71	0.60	1.18	0.87	0.61	0.72
Net charge-offs to loans and leases	0.49	0.42	0.55	0.47	1.11	0.81	0.67	0.75
Loss provision to net charge-offs	132.57	126.47	128.74	129.06	106.33	108.29	88.18	95.90
Performance ratios (%)								
Percent of institutions unprofitable	16.73	15.92	4.91	4.09	7.48	3.77	7.04	6.58
Percent of institutions with earnings gains	49.95	57.57	61.02	65.86	60.44	66.98	70.42	65.79
Nonint. income to net operating revenue	28.44	25.65	27.68	28.76	42.56	40.26	46.31	49.00
Nonint. expense to net operating revenue	73.81	73.02	63.41	63.26	62.70	58.83	69.09	62.20
Condition ratios (%)								
Nonperforming assets to assets	0.71	0.65	0.62	0.57	0.71	0.58	0.64	0.66
Noncurrent loans to loans	1.03	0.90	0.85	0.75	1.03	0.82	0.97	1.02
Loss reserve to noncurrent loans	140.94	157.49	176.30	192.43	198.92	220.63	183.03	168.20
Loss reserve to loans	1.45	1.41	1.50	1.45	2.04	1.82	1.77	1.71
Equity capital to assets	10.95	10.68	9.52	9.26	9.46	9.09	7.86	7.87
Leverage ratio	10.79	10.88	9.17	9.22	8.43	8.49	6.75	7.14
Risk-based capital ratio	18.00	17.74	14.85	14.39	12.97	12.94	11.31	11.36
Net loans and leases to assets	56.75	59.10	59.66	62.94	62.46	62.24	57.30	58.72
Securities to assets	26.59	26.88	26.86	25.04	21.76	23.57	14.60	15.08
Appreciation in securities (% of par)	1.02	–2.19	1.16	–2.37	0.90	–2.39	1.11	–2.28
Residential mortgage assets to assets	21.11	20.99	24.47	23.76	25.77	26.56	18.93	18.78
Total deposits to assets	85.55	84.91	82.67	81.05	68.65	68.26	63.05	62.49
Core deposits to assets	74.45	73.14	71.24	68.96	58.08	56.17	40.88	38.75
Volatile liabilities to assets	12.34	13.99	15.68	18.22	24.84	28.04	38.12	41.23

Loan performance, FDIC-insured commercial banks by asset size
Fourth quarter 1998 and fourth quarter 1999
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	1998Q4	1999Q4	1998Q4	1999Q4	1998Q4	1999Q4	1998Q4	1999Q4
Percent of loans past due 30–89 days								
Total loans and leases	1.67	1.39	1.33	1.13	1.51	1.22	1.14	1.11
Loans secured by real estate (RE)	1.47	1.20	1.09	0.90	1.19	0.90	1.32	1.23
1–4 family residential mortgages	1.91	1.65	1.44	1.28	1.27	1.09	1.45	1.56
Home equity loans	0.89	0.71	0.92	0.63	1.00	0.74	0.99	0.78
Multifamily residential mortgages	0.49	0.75	0.58	0.48	0.81	0.46	1.02	0.64
Commercial RE loans	1.06	0.83	0.75	0.60	1.07	0.66	1.08	0.73
Construction RE loans	1.22	0.73	1.02	0.76	1.47	1.06	1.80	1.08
Commercial and industrial loans*	1.61	1.32	1.35	1.12	1.14	1.03	0.67	0.65
Loans to individuals	2.54	2.33	2.33	2.18	2.48	2.35	2.41	2.35
Credit cards	2.52	2.01	3.58	3.84	2.52	2.78	2.54	2.44
Installment loans	2.54	2.34	2.09	1.84	2.43	2.02	2.33	2.30
All other loans and leases	NA	NA	NA	NA	0.97	0.85	0.48	0.55
Percent of loans noncurrent								
Total loans and leases	1.03	0.90	0.85	0.75	1.03	0.82	0.97	1.02
Loans secured by real estate (RE)	0.87	0.73	0.71	0.59	0.85	0.70	1.02	0.89
1–4 family residential mortgages	0.80	0.69	0.69	0.61	0.85	0.75	0.95	0.92
Home equity loans	0.52	0.42	0.39	0.31	0.51	0.39	0.40	0.28
Multifamily residential mortgages	0.82	0.64	0.64	0.43	0.91	0.48	0.88	0.38
Commercial RE loans	0.87	0.72	0.75	0.61	0.93	0.72	1.09	0.90
Construction RE loans	0.83	0.51	0.65	0.50	0.68	0.66	0.95	0.77
Commercial and industrial loans*	1.38	1.28	1.24	1.11	0.90	0.93	0.89	1.17
Loans to individuals	0.92	0.79	0.81	0.88	1.54	1.13	1.69	1.65
Credit cards	1.78	1.38	1.87	2.56	1.99	1.84	2.39	2.09
Installment loans	0.87	0.76	0.60	0.54	1.07	0.60	1.20	1.33
All other loans and leases	NA	NA	NA	NA	0.50	0.44	0.33	0.40
Percent of loans charged-off, net								
Total loans and leases	0.49	0.42	0.55	0.47	1.11	0.81	0.67	0.75
Loans secured by real estate (RE)	0.09	0.09	0.10	0.08	0.08	0.12	0.07	0.12
1–4 family residential mortgages	0.10	0.08	0.11	0.09	0.08	0.14	0.07	0.17
Home equity loans	0.17	0.02	0.11	0.08	0.22	0.14	0.11	0.18
Multifamily residential mortgages	0.19	0.19	0.00	0.12	0.06	0.06	–0.06	0.06
Commercial RE loans	0.10	0.10	0.11	0.06	0.09	0.10	0.02	0.01
Construction RE loans	0.05	0.20	0.09	0.08	0.02	0.14	0.03	0.02
Commercial and industrial loans*	0.88	0.81	0.80	0.70	0.64	0.96	0.55	0.73
Loans to individuals	1.17	0.93	2.07	1.86	3.38	2.50	2.74	2.57
Credit cards	3.86	1.54	7.38	6.77	5.73	4.57	4.83	4.30
Installment loans	1.02	0.91	1.04	0.84	0.93	1.04	1.31	1.37
All other loans and leases	NA	NA	NA	NA	0.45	0.44	0.20	0.42
Loans outstanding ($)								
Total loans and leases	$145,329	$145,407	$440,167	$481,894	$587,669	$580,211	$2,065,165	$2,283,847
Loans secured by real estate (RE)	81,473	83,011	273,559	304,713	273,079	297,539	717,456	824,494
1–4 family residential mortgages	39,452	38,740	120,803	127,141	132,155	134,453	376,268	436,459
Home equity loans	1,747	1,879	11,860	12,809	18,538	18,332	64,502	69,327
Multifamily residential mortgages	1,673	1,792	8,694	10,316	10,206	11,254	22,668	29,759
Commercial RE loans	22,116	23,213	95,175	110,487	82,938	97,520	170,321	186,256
Construction RE loans	6,052	6,685	25,975	31,454	25,587	31,961	49,109	65,468
Farmland loans	10,426	10,703	11,004	12,455	3,299	3,646	4,367	5,092
RE loans from foreign offices	8	0	48	52	358	372	30,222	32,134
Commercial and industrial loans	24,450	24,752	80,781	87,054	119,493	127,496	673,937	731,827
Loans to individuals	21,105	20,153	61,952	64,778	158,591	119,283	329,228	354,252
Credit cards	1,050	810	9,970	10,874	81,992	51,351	135,769	148,926
Installment loans	20,056	19,344	51,982	53,904	76,599	67,931	193,459	205,326
All other loans and leases	18,801	17,794	24,940	26,186	37,097	36,551	346,420	375,146
Less: Unearned income	500	303	1,066	837	591	658	1,876	1,872

*Includes "All other loans" for institutions under $1 billion in asset size.

Key indicators, FDIC-insured commercial banks by region
Fourth quarter 1999
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Number of institutions reporting	678	1,450	1,858	2,205	1,456	933	8,580
Total employees (FTEs)	484,810	470,197	283,968	126,939	117,228	173,366	1,656,508
Selected income data ($)							
Net income	$5,837	$4,872	$2,953	$1,344	$767	$1,989	$17,763
Net interest income	14,583	13,596	7,871	3,957	3,104	6,136	49,248
Provision for loan losses	2,226	1,305	695	599	315	1,004	6,144
Nninterest income	16,755	8,502	4,886	2,462	1,146	5,075	38,827
Noninterest expense	20,000	13,613	7,671	3,699	2,729	7,045	54,758
Net operating income	5,789	4,748	2,960	1,412	853	1,978	17,741
Cash dividends declared	4,563	4,107	2,980	1,079	867	2,748	16,343
Net charge-offs to loan and lease reserve	2,255	1,446	667	525	265	860	6,019
Selected condition data ($)							
Total Assets	2,009,614	1,531,707	952,019	389,570	314,253	537,680	5,734,843
Total loans and leases	1,047,477	997,360	640,284	266,328	181,114	358,796	3,491,359
Reserve for losses	20,194	15,215	8,779	4,449	2,385	7,734	58,757
Securities	338,167	280,783	176,148	73,185	84,753	93,135	1,046,171
Other real estate owned	832	768	346	199	251	396	2,792
Noncurrent loans and leases	13,222	8,166	4,805	2,080	1,658	3,069	33,000
Total deposits	1,267,705	1,018,044	639,520	275,577	248,421	381,508	3,830,776
Domestic deposits	792,904	921,188	584,337	268,729	246,411	361,618	3,175,187
Equity capital	155,029	131,761	76,400	34,499	26,811	55,375	479,875
Off-balance-sheet derivatives	26,792,898	6,404,869	1,270,779	33,850	27,216	287,270	34,816,882
Performance ratios (annualized %)							
Return on equity	15.47	14.95	15.46	15.86	11.47	14.58	15.03
Return on assets	1.21	1.29	1.26	1.41	0.99	1.53	1.27
Net interest income to assets	3.02	3.59	3.34	4.15	4.01	4.70	3.52
Loss provision to assets	0.46	0.35	0.30	0.63	0.41	0.77	0.44
Net operating income to assets	1.20	1.26	1.26	1.48	1.10	1.52	1.27
Noninterest income to assets	3.47	2.25	2.08	2.58	1.48	3.89	2.77
Noninterest expense to assets	4.15	3.60	3.26	3.88	3.52	5.40	3.91
Loss provision to loans and leases	0.87	0.53	0.44	0.92	0.71	1.15	0.72
Net charge-offs to loans and leases	0.88	0.59	0.42	0.81	0.60	0.98	0.70
Loss provision to net charge-offs	98.68	90.26	104.19	114.05	119.01	116.70	102.08
Performance ratios (%)							
Percent of institutions unprofitable	12.54	14.41	8.07	9.84	12.02	13.50	11.21
Percent of institutions with earnings gains	60.62	61.86	61.14	60.00	58.72	64.84	60.92
Nonint. income to net operating revenue	53.47	38.47	38.30	38.35	26.97	45.27	44.08
Nonint. expense to net operating revenue	63.82	61.61	60.13	57.64	64.19	62.84	62.17
Condition ratios (%)							
Nonperforming assets to assets	0.71	0.58	0.56	0.59	0.61	0.67	0.63
Noncurrent loans to loans	1.26	0.82	0.75	0.78	0.92	0.86	0.95
Loss reserve to noncurrent loans	152.73	186.33	182.72	213.84	143.84	252.01	178.05
Loss reserve to loans	1.93	1.53	1.37	1.67	1.32	2.16	1.68
Equity capital to assets	7.71	8.60	8.03	8.86	8.53	10.30	8.37
Leverage ratio	7.54	7.57	7.69	8.47	8.19	8.87	7.80
Risk-based capital ratio	12.40	11.61	11.82	12.74	13.58	12.46	12.16
Net loans and leases to assets	51.12	64.12	66.33	67.22	56.87	65.29	59.86
Securities to assets	16.83	18.33	18.50	18.79	26.97	17.32	18.24
Appreciation in securities (% of par)	–2.10	–2.75	–2.30	–1.87	–2.55	–1.89	–2.31
Residential mortgage assets to assets	16.35	27.33	21.53	20.23	22.64	16.58	20.77
Total deposits to assets	63.08	66.46	67.18	70.74	79.05	70.95	66.80
Core deposits to assets	31.63	52.21	52.80	61.85	66.91	56.50	46.96
Volatile liabilities to assets	46.63	30.18	31.92	22.27	21.44	27.26	34.94

Loan performance, FDIC-insured commercial banks by region
Fourth quarter 1999
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Percent of loans past due 30–89 days							
Total loans and leases	1.11	1.13	1.21	1.24	1.17	1.06	1.14
Loans secured by real estate (RE)	1.13	1.21	1.09	0.94	1.10	0.77	1.09
1–4 family residential mortgages	1.34	1.67	1.26	1.13	1.49	1.26	1.43
Home equity loans	0.75	0.82	0.81	0.65	0.70	0.48	0.75
Multifamily residential mortgages	0.51	0.46	1.01	0.68	0.58	0.31	0.58
Commercial RE loans	0.73	0.61	0.89	0.74	0.75	0.46	0.69
Construction RE loans	0.83	0.82	1.35	0.93	1.14	0.98	0.98
Commercial and industrial loans*	0.55	0.70	1.05	1.29	1.15	0.97	0.80
Loans to individuals	2.53	2.36	2.32	2.41	1.70	1.99	2.33
Credit cards	2.75	2.93	2.25	2.89	1.15	1.98	2.59
Installment loans	2.31	2.17	2.33	1.96	1.72	2.01	2.17
All other loans and leases	0.48	0.33	0.92	0.50	0.55	0.62	0.55
Percent of loans noncurrent							
Total loans and leases	1.26	0.82	0.75	0.78	0.92	0.86	0.95
Loans secured by real estate (RE)	1.01	0.77	0.71	0.57	0.85	0.62	0.79
1–4 family residential mortgages	0.90	0.88	0.75	0.51	0.76	0.77	0.82
Home equity loans	0.38	0.25	0.34	0.28	0.32	0.25	0.31
Multifamily residential mortgages	0.41	0.37	0.50	0.29	0.44	0.46	0.42
Commercial RE loans	0.98	0.73	0.78	0.64	1.01	0.56	0.77
Construction RE loans	0.93	0.73	0.55	0.47	0.56	0.66	0.67
Commercial and industrial loans*	1.40	1.01	0.98	1.06	1.52	1.17	1.18
Loans to individuals	2.23	0.94	0.76	1.26	0.52	1.18	1.42
Credit cards	2.45	1.71	1.17	1.96	0.67	1.66	2.05
Installment loans	2.01	0.70	0.69	0.61	0.51	0.37	1.03
All other loans and leases	0.38	0.38	0.42	0.36	0.36	0.44	0.39
Percent of loans charged-off, net							
Total loans and leases	0.88	0.59	0.42	0.81	0.60	0.98	0.70
Loans secured by real estate (RE)	0.09	0.12	0.11	0.13	0.12	0.09	0.11
1–4 family residential mortgages	0.09	0.14	0.17	0.20	0.18	0.20	0.14
Home equity loans	0.12	0.18	0.20	0.17	0.50	0.04	0.16
Multifamily residential mortgages	0.11	0.07	0.04	0.13	0.02	0.07	0.07
Commercial RE loans	0.02	0.06	0.06	0.06	0.07	0.03	0.05
Construction RE loans	0.01	0.13	0.00	0.04	0.05	0.10	0.07
Commercial and industrial loans*	0.72	0.94	0.47	0.62	1.05	1.21	0.79
Loans to individuals	2.77	2.11	1.51	3.07	1.26	2.99	2.41
Credit cards	4.34	5.04	4.13	5.54	2.27	4.07	4.49
Installment loans	1.31	1.23	1.09	0.83	1.22	1.26	1.20
All other loans and leases	0.56	0.19	0.37	0.25	0.37	0.38	0.39
Loans outstanding ($)							
Total loans and leases	$1,047,477	$997,360	$640,284	$266,328	$181,114	$358,796	$3,491,359
Loans secured by real estate (RE)	339,856	511,269	290,380	120,843	83,709	163,700	1,509,758
1–4 family residential mortgages	185,859	277,738	132,775	56,453	33,823	50,144	736,793
Home equity loans	23,383	35,236	25,474	5,571	1,209	11,474	102,347
Multifamily residential mortgages	13,693	14,676	10,284	3,502	2,564	8,401	53,121
Commercial RE loans	73,004	123,686	87,930	33,270	31,705	67,881	417,475
Construction RE loans	13,736	50,778	26,023	11,965	10,925	22,140	135,568
Farmland loans	1,266	6,322	7,862	10,082	3,482	2,882	31,897
RE loans from foreign offices	28,914	2,833	32	0	0	779	32,558
Commercial and industrial loans	324,457	268,186	183,076	59,957	46,884	88,569	971,129
Loans to individuals	204,056	119,284	78,195	50,050	33,043	73,837	558,465
Credit cards	101,457	28,589	10,499	24,063	1,319	46,034	211,961
Installment loans	102,600	90,696	67,696	25,987	31,723	27,803	346,505
All other loans and leases	180,753	99,423	88,941	35,538	17,787	33,235	455,677
Less: Unearned income	1,645	802	308	60	309	546	3,670

*Includes "All other loans" for institutions under $1 billion in asset size.

Glossary

Data Sources

Data are from the Federal Financial Institutions Examination Council (FFIEC) Reports of Condition and Income (call reports) submitted by all FDIC-insured, national-chartered and state-chartered commercial banks and trust companies in the United States and its territories. Uninsured banks, savings banks, savings associations, and U.S. branches and agencies of foreign banks are excluded from these tables. All data are collected and presented based on the location of each reporting institution's main office. Reported data may include assets and liabilities located outside of the reporting institution's home state.

The data are stored on and retrieved from the OCC's Integrated Banking Information System (IBIS), which is obtained from the FDIC's Research Information System (RIS) database.

Computation Methodology

For performance ratios constructed by dividing an income statement (flow) item by a balance sheet (stock) item, the income item for the period was annualized (multiplied by the number of periods in a year) and divided by the average balance sheet item for the period (beginning-of-period amount plus end-of-period amount plus any interim periods, divided by the total number of periods). For "pooling-of-interest" mergers, prior period(s) balance sheet items of "acquired" institution(s) are included in balance sheet averages because the year-to-date income reported by the "acquirer" includes the year-to-date results of "acquired" institutions. No adjustments are made for "purchase accounting" mergers because the year-to-date income reported by the "acquirer" does not include the prior-to-merger results of "acquired" institutions.

Definitions

Commercial real estate loans—loans secured by nonfarm nonresidential properties.

Construction real estate loans—includes loans for all property types under construction, as well as loans for land acquisition and development.

Core deposits—the sum of transaction deposits plus savings deposits plus small time deposits (under $100,000).

IBIS—OCC's Integrated Banking Information System.

Leverage ratio—Tier 1 capital divided by adjusted tangible total assets.

Loans to individuals—includes outstanding credit card balances and other secured and unsecured installment loans.

Net charge-offs to loan and lease reserve—total loans and leases charged off (removed from balance sheet because of uncollectibility), less amounts recovered on loans and leases previously charged off.

Net loans and leases to assets—total loans and leases net of the reserve for losses.

Net operating income—income excluding discretionary transactions such as gains (or losses) on the sale of investment securities and extraordinary items. Income taxes subtracted from operating income have been adjusted to exclude the portion applicable to securities gains (or losses).

Net operating revenue—the sum of net interest income plus noninterest income.

Noncurrent loans and leases—the sum of loans and leases 90 days or more past due plus loans and leases in nonaccrual status.

Nonperforming assets—the sum of noncurrent loans and leases plus noncurrent debt securities and other assets plus other real estate owned.

Number of institutions reporting—the number of institutions that actually filed a financial report.

Off-balance-sheet derivatives—the notional value of futures and forwards, swaps, and options contracts;

beginning March 31, 1995, new reporting detail permits the exclusion of spot foreign exchange contracts. For March 31, 1984 through December 31, 1985, only foreign exchange futures and forwards contracts were reported; beginning March 31, 1986, interest rate swaps contracts were reported; beginning March 31, 1990, banks began to report interest rate and other futures and forwards contracts, foreign exchange and other swaps contracts, and all types of option contracts.

Other real estate-owned—primarily foreclosed property. Direct and indirect investments in real estate ventures are excluded. The amount is reflected net of valuation allowances.

Percent of institutions unprofitable—the percent of institutions with negative net income for the respective period.

Percent of institutions with earnings gains—the percent of institutions that increased their net income (or decreased their losses) compared to the same period a year earlier.

Reserve for losses—the sum of the allowance for loan and lease losses plus the allocated transfer risk reserve.

Residential mortgage assets—the sum of 1-4 family residential mortgages plus mortgage-backed securities.

Return on assets (ROA)—net income (including gains or losses on securities and extraordinary items) as a percentage of average total assets.

Return on equity (ROE)—net income (including gains or losses on securities and extraordinary items) as a percentage of average total equity capital.

Risk-based capital ratio—total capital divided by risk weighted assets.

Risk-weighted assets—assets adjusted for risk-based capital definitions which include on-balance-sheet as well as off-balance-sheet items multiplied by risk weights that range from zero to 100 percent.

Securities—excludes securities held in trading accounts. Effective March 31, 1994 with the full implementation of Financial Accounting Standard (FAS) 115, securities classified by banks as "held-to-maturity" are reported at their amortized cost, and securities classified a "available-for-sale" are reported at their current fair (market) values.

Securities gains (losses)—net pre-tax realized gains (losses) on held-to-maturity and available-for-sale securities.

Total capital—the sum of Tier 1 and Tier 2 capital. Tier 1 capital consists of common equity capital plus noncumulative perpetual preferred stock plus minority interest in consolidated subsidiaries less goodwill and other ineligible intangible assets. Tier 2 capital consists of subordinated debt plus intermediate-term preferred stock plus cumulative long-term preferred stock plus a portion of a bank's allowance for loan and lease losses. The amount of eligible intangibles (including mortgage servicing rights) included in Tier 1 capital and the amount of the allowance included in Tier 2 capital are limited in accordance with supervisory capital regulations.

Volatile liabilities—the sum of large-denomination time deposits plus foreign-office deposits plus federal funds purchased plus securities sold under agreements to repurchase plus other borrowings. Beginning March 31, 1994, new reporting detail permits the exclusion of other borrowed money with original maturity of more than one year; previously, all other borrowed money was included. Also beginning March 31, 1994, the newly reported "trading liabilities less revaluation losses on assets held in trading accounts" is included.

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Comptroller's Report of Operations—1999

Comptroller

The Comptroller's office oversees a nationwide staff of bank examiners and other professional and support personnel who examine and supervise federally chartered national banks and federally licensed branches and agencies of foreign banks. As of December 31, 1999, there were about 2,400 national banks, representing about 28 percent of all insured commercial banks in the United States and 57 percent of the total assets of the banking system. During the year, national banks generated about 60 percent of the industry's earnings.

The Comptroller also serves as a director of the Federal Deposit Insurance Corporation (FDIC), the Federal Financial Institutions Examination Council (FFIEC), and the Neighborhood Reinvestment Corporation (NRC).

The Comptroller's personal staff continues to direct, coordinate, and manage the day-to-day operations of the Comptroller's office; oversee projects of special interest to the Comptroller; and serve as liaison with OCC staff and the staffs of other regulatory agencies.

Executive Committee

The OCC's Executive Committee provides advice and counsel to the Comptroller in managing the operation of the agency, and the Committee approves policy project initiatives and the associated use of agency resources. The Executive Committee is comprised of the Comptroller, the first senior deputy comptroller and chief counsel, the chief of staff, the ombudsman, the senior deputy comptroller for Bank Supervision Policy, the senior deputy comptroller for Bank Supervision Operations, the senior deputy comptroller for Economic and Policy Analysis, the senior deputy comptroller for International Affairs, the senior deputy comptroller for Public Affairs, and the senior deputy comptroller for Administration and chief financial officer.

Internal Year 2000 Remediation

The OCC took appropriate precautionary measures to ensure its readiness for the rollover to the year 2000 (Y2K). An oversight committee, comprised of the OCC's most senior managers focused significant attention and resources on the Y2K issue in an effort to address any potential problems. The OCC's Y2K Oversight Committee recognized the complexities of Y2K remediation efforts and the differences presented in our mission of addressing both bank supervision and internal issues. To effectively deal with these differences, the OCC developed separate processes for both external and internal Y2K efforts. The external effort focused on the year-2000 readiness of the bank and service providers we supervise. The internal program concentrated on remediation of the OCC's internal systems and facilities.

All OCC internal systems and facilities were tested and certified as year-2000 compliant in 1999. The OCC identified 13 mission-critical informational technology (IT) systems that support the key business functions of the agency. As of November 30, 1998, the OCC retired one system and renovated and validated the remaining 12 mission critical systems, well in advance of Treasury Department deadlines. In addition, all non-mission critical systems were tested and certified as compliant by November 30, 1999. The OCC's data exchange partners and telecommunication systems are also compliant. The OCC tested its mission-critical contingency plans and conducted a simultaneous agency-wide test in March 1999. In conjunction with its IT systems, the OCC also closely monitored the renovation, validation, and implementation phases of non-IT systems at all nine primary sites as outlined in its Non-IT Project Management Plan.

Information Technology Services Department

In 1999, Information Technology Services (ITS) initiated partnerships with each of the OCC's business units. The 1999 technology implementations reflected those partnerships and the department's continued commitment to provide the OCC with quality technology alternatives and superior customer service.

The chief information officer (CIO) leads ITS. As the senior information technology official, the CIO is the advisor to senior OCC staff regarding IT (information technology) investments and solutions. The CIO represents OCC at the Department of the Treasury on all IT issues and has forged business relationships with other federal financial regulators to ensure cooperation and consistency of practice.

The CIO has an administrative staff and three divisions (Customer Services, Information Services, and Network Services)

under his supervision. The key responsibility of these units is to ensure reliable, timely access to information using the best practices of government and private industry.

Chief Information Officer

The CIO staff provides administrative support to the CIO and ITS divisions. A special projects manager and a special assistant report directly to the CIO.

The special assistant has primary coordination responsibility for the day-to-day operations of the department, and has direct reports including the Policy, Planning and Quality Assurance team, and IT human resource and budget personnel.

The staff's key roles include supporting IT capital planning process; IT human resources administration; IT contract coordination; IT budget planning; strategic planning; IT workforce skills challenges; enterprise test bed and configuration management. In addition, the staff acts as the IT Treasury liaison and leads the development of policy, standards and procedures to ensure appropriate management controls are in place and that quality system and customer-oriented technology services are provided.

The special projects manager reports directly to the CIO and has responsibility for Information Security and OCC business unit IT liaisons. Increased attention and resources have been allocated to information security in 1999. An Information Security Policy has been developed for OCC that includes a handbook that describes information security responsibilities, roles, and rules of behavior. Special resources have been devoted to establishing and maintaining a computer virus detection and eradication program.

In addition, the Security team has the lead responsibility for a critical infrastructure plan for the OCC as well as an inventory of systems. Appropriate personnel, policies, standards, and procedures have been identified to continue the critical business of the OCC and to ensure the safety of our sensitive data in the event of a disaster.

Additional staff initiatives in the area of strategic planning, performance goals, and legislative compliance continued to support the agency's technology mission and objectives. The teams provided extensive support to Treasury-led initiatives in the areas of IT capital planning and workforce skills in project management.

Customer Services Division

The Customer Services division is the primary technology support unit for the Washington office and district IT services. A director heads the division with a special projects manager and six district team leader direct reports. The special projects manager oversees the headquarters team leaders for support, implementation and Help Desk/Depot. The district team leaders coordinate all ITS activities for the districts and provide the first line of customer support.

The division's services include front-line customer support, troubleshooting, on-site and Help Desk support, equipment requests, and depot maintenance functions. The division also leads special implementation projects and is currently leading the beta testing of a new mail system for the OCC (Outlook/Exchange).

The Customer Services division continued offering technology centers at the district and specialty staff conferences. This year, a technology fair was held for all headquarters personnel to offer on-site demonstrations of the latest technology alternatives.

Customer Services staff upgraded more than 1,000 notebook computers during 1999 as part of OCC's three-year replacement program for workstations. The division has also modified its help desk support systems and is implementing a more inclusive workstation asset management program for tracking computer equipment inventory.

Information Services Division

The Information Services division is responsible for systems development and maintenance support, desktop management, and technical research on an agency-wide basis. The organization is made up of teams that support various applications and technologies. Major responsibilities include: introducing new technology, maintaining existing applications, developing new applications, researching and customizing software, and providing cost-effective and efficient ways to meet customer technology needs.

Recent projects and accomplishments include:

- Redesigning the Shared National Credit System to support a more risk-focused approach and to implement a seamless, more integrated technical solution by reducing the number of platforms and development tools used.

- Using data warehouse technology to consolidate data from various internal and external sources into a consistent format for self-service use by OCC users.

- Continuing development and implementation of the Examiner View project as well as piloting processes to support virtual and paperless examinations.

- Certifying all of OCC's mission-critical systems and commercial software products as year-2000 ready.

- Developing the OCC's National Banknet (extranet) Web site to promote electronic two-way communications with national banks.

- Redesigning the OCC's intranet to improve information accessibility for all OCC employees. This will result in faster, more efficient collection of information, and also result in cost savings by allowing content providers to post information directly.

- Implementing phase I of the PeopleSoft Human Resources Management System. When completed, it will improve the efficiency of human resource operations and provide employee and manager with self-service capabilities.

Network Services Division

The Network Services division is responsible for maintaining the agency's technology infrastructure. This infrastructure is based on the precepts of reliable access and maintenance of the OCC's technology architecture including database operations, local area networks, server and mainframe operations, and voice and data telecommunications services. The division is based at the Data Center facility in Landover, Maryland.

During 1999, Network Services expanded the business resumption plan to cover all critical information technology services at OCC. Previously the business resumption plan only addressed restoration of mainframe systems. The division also continued to upgrade and standardize field office phone systems. Approximately 40 systems have been replaced in 1999. The agency-wide operating system conversion from Banyan Vines to Microsoft NT will be completed this year as well.

The program to install data lines in community banks during examinations has increased use with an average of 50 telephone lines being installed every month. The headquarters building is currently being rewired to provide for future upgrades in service.

Executive Committee

First Senior Deputy Comptroller and Chief Counsel

In 1999, the first senior deputy comptroller and chief counsel (chief counsel) continued the function of advising the Comptroller on legal matters arising from the administration of laws, rulings, and regulations governing national banks. The chief counsel was responsible for directing the legal functions in and for the OCC, including writing and interpreting legislation; responding to requests for interpretations of statutes, regulations, and rulings; defending the Comptroller's actions challenged in administrative and judicial proceedings; supporting the bank supervisory efforts of the office; and representing the OCC in all legal matters. These duties were carried out through two deputy chief counsels. One deputy counsel was responsible for overseeing Bank Activities and Structure, Enforcement and Compliance, Litigation, Securities and Corporate Practices, and the six district counsels; and the other was responsible for Administrative and Internal Law, Community and Consumer Law, the Counselor for International Activities, and Legislative and Regulatory Activities.

The chief counsel in 1999 advised the Comptroller on policy matters involving corporate activities and had responsibility for overseeing the OCC's corporate activities area. The Comptroller delegated authority for deciding all corporate applications, including charters, mergers and acquisitions, conversions, and operating subsidiaries of national banks, to the chief counsel. These responsibilities were carried out through the deputy comptroller for Bank Organization and Structure, the District/Large Bank Licensing division, Licensing Policy and Systems division, Washington-Directed Licensing division, and the licensing units in each of the OCC's six district offices.

The chief counsel also advised the Comptroller on matters involving community affairs and had responsibility for overseeing the OCC's community affairs activities, including approval of national bank community development investments. These responsibilities were carried out through the deputy comptroller for Community Affairs, the Community Development division, the Community Relations division, and the Minority and Urban Affairs division.

Ombudsman

The ombudsman is responsible for overseeing the national bank appeals process and the Customer Assistance Group. The Customer Assistance Group processes complaints received from customers of national banks. The ombudsman also acts as liaison between the OCC and anyone with unresolved problems in dealing with the OCC regarding its regulatory activities.

Senior Deputy Comptroller for Bank Supervision Policy

The senior deputy comptroller for Bank Supervision Policy is responsible for formulating and disseminating the OCC's supervision policies to promote national banks' safety and soundness and compliance with laws and regulations. The department issues policy, guidance, and examination procedures related to national banks' asset management, bank technology, capital markets, commercial, and consumer and community compliance activities. The department also served as the OCC's focal point for developing supervisory policies and programs for monitoring and assessing national banks' year-2000 readiness and also coordinates the OCC's international year-2000 efforts. The department also assists in providing specialized training and examination support to OCC examiners. The senior deputy comptroller for Bank Supervision Policy is responsible for coordinating OCC participation in Federal Financial Institutions Examination Council (FFIEC) activities and its task forces.

Senior Deputy Comptroller for Bank Supervision Operations

The senior deputy comptroller for Bank Supervision Operations was responsible for examinations and other supervision activities in the OCC's six districts; the Large Bank Supervision department, which supervises the largest national banks and oversees operations in the OCC's London office; and OCC's Compliance Operations, Continuing Education and Resource Alternatives, Supervision Support departments, and the Community Bank Activities division. Specific responsibilities of the senior deputy comptroller for Bank Supervision Operations included directing programs for the examination and regulation of national banks to promote the continuing existence of a safe, sound, and competitive national banking system. The senior deputy comptroller for Bank Supervision Operations was responsible during 1999 for directing the examination, supervision, and analysis of about 2,400 national banks and about 58 federal branches and agencies of foreign banks in the United States accounting for about 57 percent of the nation's banking assets. Supervision of national trust companies, bank data processing servicers, bank data software vendors, the international activities of national banks with global operations, and year-2000 examination activities were also the responsibility of the senior deputy comptroller for Bank Supervision Operations.

Senior Deputy Comptroller for Economic and Policy Analysis

The senior deputy comptroller for Economic and Policy Analysis was responsible for managing the agency's economic research and analysis program, providing policy advice on issues relating to the condition of the banking industry and trends in the provision of financial services, and overseeing preparation of congressional testimony for the Comptroller. Economics and Policy Analysis also contributed to the assessment of risks in the largest national banks and developed new tools for estimating emerging systemic risks. These activities were carried out through the Policy Analysis, the Economic Analysis, and the Risk Analysis divisions.

Senior Deputy Comptroller for International Affairs

In 1999, the senior deputy comptroller for International Affairs was responsible for OCC's international activities, including providing policy advice and technical expertise and analyses to OCC and the Treasury Department on international banking and financial matters, including G–7 summit issues; formulating policies and procedures for the supervision and examination of federal branches and agencies of foreign banks; serving as liaison with foreign bank supervisors and various multilateral groups; and providing analysis of country risk and other internationally related issues. These responsibilities were conducted in the International Banking and Finance Department. The senior deputy comptroller represents the OCC on the Basle Committee on Banking Supervision and the Joint Forum on Financial Conglomerates.

Senior Deputy Comptroller for Public Affairs

The senior deputy comptroller for Public Affairs advises the Comptroller on external relations with the news media, the banking industry, Congress, other government agencies, and the general public.

Specific responsibilities include the following: overseeing regular outreach efforts to foster and develop relationships with the constituencies involved in banking; tracking legislative developments and responding to congressional inquiries and requests for support; directing the preparation and dissemination of information to help bankers, examiners, community organizations, and the general public understand the national banking system, the OCC's supervisory activities, and related issues; ensuring fair and easy access to the agency's public information; coordinating internal communications; and managing news media relations for the agency.

The senior deputy comptroller for Public Affairs carries out these responsibilities through the Banking Relations and Congressional Liaison divisions, and the Public Affairs department, comprising the special advisor for Executive Communications and the Communications and Press Relations divisions.

Senior Deputy Comptroller for Administration and Chief Financial Officer

In 1999, the senior deputy comptroller (SDC) for Administration and chief financial officer, assisted by the deputy comptroller for Administration, was responsible for the efficient and effective administrative functioning of the OCC. In addition to supervising the Human Resources, Administrative Services, Financial Services, Management Improvement, and Organizational Effectiveness divisions, the SDC created a separate Acquisitions Services division to oversee and improve the agency's acquisition and procurement functions.

In 1999, the SDC focused on efforts to strengthen the OCC's financial management and internal controls, including conducting a thorough review of OCC financial processes, development of a comprehensive corrective action plan, and initiation of a program to modernize OCC's financial management and related systems. Significant efforts were also made during 1999 to enhance the agency's human resource system, provide leadership in the agency's non-information technology year-2000 efforts, implement emergency management processes, and lead the redesign of the OCC's compensation and benefits program.

The senior deputy comptroller for Administration also oversees the OCC's equal employment program. During 1999, primary emphasis was placed on implementing the agency's Hispanic Employment Action Plan and development of an Alternative Dispute Resolution program.

Ombudsman

In 1999, the ombudsman was responsible for overseeing the national bank appeals process and the Customer Assistance Group (CAG). The CAG processes complaints received from customers of national banks. The ombudsman functions independently, outside of bank supervision and reports directly to the Comptroller.

The primary ongoing activities of the national bank appeals process included resolution of individual appeals from national banks, administration of the examination questionnaire process, and outreach activities. With the consent of the Comptroller, the ombudsman has the discretion to supersede any agency decision or action during the resolution of an appealable matter. The ombudsman often acted as a catalyst to spawn reviews of agency policies, processes, and procedures as a result of issues identified through his activities. The ombudsman also acted as liaison between the OCC and anyone with unresolved problems in dealing with the OCC regarding its regulatory activities.

The ombudsman also has responsibility for management of the CAG. This group processes complaints received from customers of national banks. The office oversees a call center with trained compliance professionals, and an advanced platform of equipment to enhance the unit's ability to deliver responsive customer service. The CAG has adopted the philosophy of resolving as many cases as possible at the point of first contact. By facilitating communications between national banks and their customers, the CAG supports industry efforts to sustain a broad and satisfied customer base in a highly competitive financial services market. The unit's constituents not only include customers of national banks, but also the national banks and OCC bank supervision.

Bank Supervision Policy Department

The senior deputy comptroller for Bank Supervision Policy is responsible for formulating and disseminating the OCC's supervision policies to promote national banks' safety and soundness and compliance with laws and regulations. The department issues policy, guidance, and examination procedures related to national banks' asset management, bank technology, capital markets, commercial, and consumer and community compliance activities. The department also served as the OCC's focal point for developing supervisory policies and programs for monitoring and assessing national banks' year-2000 readiness and also coordinates the OCC's international year-2000 efforts. The department also assists in providing specialized training and examination support to OCC examiners. The senior deputy comptroller for Bank Supervision Policy is responsible for coordinating OCC participation in Federal Financial Institutions Examination Council (FFIEC) activities and its task forces.

Asset Management Division

The Asset Management Division is the focal point for the development of OCC policy as it relates to national banks' asset management services. Financial services included under the umbrella of asset management are fiduciary and investment advisory services, retirement services, retail securities brokerage, and securities custody and transaction processing.

During 1999, the division worked on a number of projects. Asset management staff actively participated in the Millennium Project, a project undertaken to assess the state of the OCC's supervisory activities relating to asset management services. Members of the division contributed to the supplemental guidance issued to OCC Banking Circular 277. Specifically, division members developed the information addressing the use of hedge funds as investments for asset management clients. The division worked with the Economics staff on a study of the retirement services industry in large national banks. Division members successfully worked with the Certified Financial Planner Board to obtain recognition of asset management examination experience as qualifying work experience for purposes of receiving the Certified Financial Planner designation.

The Asset Management staff participated in a number of industry meetings, programs, and seminars. In the first and second quarters of 1999, all members of the division participated in the OCC's district staff conferences. Division staff presented information addressing the evolving asset management business, risk management processes, and the fundamentals of asset management supervision. Also, the division staff participated as instructors at OCC and FFIEC training programs. In the first quarter, and again in the third quarter, the division sponsored a Fiduciary roundtable for a group of district and large bank examiners. Beginning in October, the division instituted a series of topic-specific conference calls. Approximately 60 asset management examiners, examiners-in-charge, and deputy comptrollers participated in this series of informational calls.

Asset Management continues to communicate industry news to asset management examiners by periodically issuing the Asset Management Digest and maintaining the Asset Management intranet site. In conjunction with Continuing Education, Asset Management made basic fiduciary and retirement services training compact disks (CDs) available to all OCC employees through the Asset Management intranet site. All staff members participated in asset management examinations of national banks, resolved consumer complaints, and responded to many inquiries from bankers.

Bank Technology Division

The mission of the Bank Technology division is to provide leadership and support to position the OCC to effectively supervise the use of technology in the national banking system. The strategies the division is employing to achieve this mission are researching specific technologies, enhancing examiner education, and reinventing the technology supervision process.

Current projects in the division focus on Internet banking and technology risk. This includes policy development, technical support for corporate applications, and examiner training. The division focuses attention on the new and emerging technologies while maintaining emphasis and expertise on the existing technologies used within the financial institutions supervised.

The division's examiner education efforts include participating with the FFIEC in providing an Information Systems & Technology Conference for all information systems examiners. This conference provides an overview of various technology issues affecting the examination process. The division also provides bank technology training for all OCC information systems examiners. This includes in-depth training on specific technologies employed in the national banking system. In addition, the division sponsors a Certified Information Systems Auditor Review course for all OCC examiners interested in obtaining this industry certification.

A major effort of Bank Technology over the next two to three years is a reinvention of the supervision of technology in the national banking system. The goals of this project are to ensure that:

- Technology risks are well understood.
- Technology risks are fully integrated into the OCC supervision by risk process.
- Examiners have the tools and knowledge to effectively assess the quantity of technology risk and quality of risk management in the institutions the OCC supervises.

Objectives of this project include:

- Expanding risk definitions to include technology in all nine risk areas.
- Integrating Information Systems examiners with commercial examination teams.
- Developing integrated examination objectives and risk identification processes.
- Training all examiners in technology risk.

Year 2000 Supervision Policy Division

The Year 2000 Supervision Policy division is responsible for developing OCC's policies and guidance to bankers and examiners on year-2000 remediation efforts. The division works closely with the other FFIEC-member agencies to provide timely guidance, training, examination procedures, and examination support on year-2000 (Y2K) issues. All of these efforts have supported the year-2000 examination and supervision efforts for national banks, and for those service providers and software vendors monitored on an interagency basis. The division also participates in the Financial Sector Group of the President's Council on Year 2000 Conversion.

During 1999, the division assisted the FFIEC in developing and issuing guidance on:

- Communicating with bank customers;
- Questions concerning year-2000 business resumption contingency plans;
- A checklist for bank customers;
- Year-2000-related fraud prevention;
- Regulatory activities associated with the century date change (CDC) rollover weekend for software vendors and service providers; and
- Year-2000 information security precautions.

The division implemented training relating to testing and contingency planning for more than 600 OCC examiners. This training provided examiners with the necessary skills to evaluate a bank's testing results and business resumption contingency plans.

In addition to these interagency efforts, the division assisted the OCC's Communications division in developing an FFIEC-sponsored video: "Year 2000: The Bottom Line," relating the financial services industry's readiness for the year-2000. Banks were encouraged to display the video in the bank lobby and at community outreach events to help inform customers about year-2000 preparations of the financial industry. We also assisted Communications in producing a brochure, "Banks are Ready: Meeting the Y2K Challenge," that highlights the industry's progress and the important things bank customers should know about the year-2000 issue. The division also prepares quarterly reports to Congress, national banks, and OCC examiners on Y2K efforts and progress, and conducts numerous industry outreach efforts.

Global Banking Division

The Global Banking division was created in 1998 to serve as the focal point for the OCC's supervisory policy efforts relating to emerging global risks. Currently, those risks include international supervisory concerns emanating from the year-2000 problem and the cross-border supervisory policy implications of electronic banking developments. Global Banking identifies and assesses emerging international risk and activities and provides appropriate policy direction and responses. In addition, the Global Banking division serves as an OCC liaison with other U.S. bank supervisory agencies and foreign financial industry regulators regarding global bank supervisory issues.

Global Banking coordinates the OCC's external efforts with both the U.S. and international financial regulatory communities regarding international year-2000 supervisory issues. The division's staff represents the OCC on the Basel Committee for Bank Supervision's Year 2000 Task Force and also actively coordinates with the President's Council on Year 2000 Conversion's International Working Group, the Global 2000 Co-ordinating Group, and other international bodies that are focusing on the year-2000 challenge. The division also collects and maintains information and analysis relative to global year-2000 preparedness and associated risks.

Global Banking also coordinates the OCC's participation in the Basel Committee's Electronic Banking Group, which is focusing on cross-border supervisory policy issues associated with the rapid evolution of electronic banking.

Risk Evaluation Department

The deputy comptroller for Risk Evaluation chairs the OCC's National Risk Committee (NRC) and oversees the OCC's Risk Evaluation (RE) department and the Treasury and Market Risk (T&MR) division.

National Risk Committee/Risk Evaluation Department

The NRC identifies primary and emerging risks to the national banking system, stays abreast of evolving business practices and financial market issues, informs the OCC's Executive Committee of material risks facing the national banking system, and makes recommendations as to appropriate supervisory responses. The NRC also coordinates national and district risk committee initiatives and communicates risk issues and OCC supervisory efforts to address those issues.

The NRC generally meets every other week, and its members include senior representatives from key areas across the OCC. The Risk Evaluation Department is responsible for supporting NRC initiatives. In addition to administering regular NRC meetings, the division assists in the analysis of systemic safety and soundness issues. Toward that goal, the RE department refined a "radar screen" of issues that are sources of risk to the safety and soundness of the national banking system, including developing a revised method for characterizing and prioritizing the degree of risk posed by each issue. This radar screen is used in NRC discussions with the Executive Committee, and transmitted to OCC examiners. In addition, RE assisted in the creation of a "hot issues" radar screen of specific high profile issues requiring heightened supervisory focus.

The Risk Evaluation department also assists in the NRC regular briefings to inform the OCC's Executive Committee of material risks facing the national banking system. Some of the major issues addressed by the NRC during 1999 included the condition of the banking industry, the quality of credit underwriting and risk management practices, year-2000, domestic and international macroeconomic trends, emerging technologies and data security risks, securitization activities and residual risks, and liquidity risks. The NRC also made recommendations as to appropriate supervisory actions to take in response to these issues, and monitored and reported on the OCC's supervisory efforts to respond to such risks.

As an accompaniment to the regular Executive Committee briefings, the RE department assisted in the creation and circulation of an ongoing series of short memos to examiners, "Economic and Systemic Issues Affecting the National Banking System." Specific issues analyses and OCC responses are available to OCC examiners on the agency's intranet. For external audiences, RE established and maintains an extensive outreach program and public speaking schedule. Audiences included domestic and international commercial bankers, as well as domestic and international regulators.

National initiatives are coordinated with OCC district initiatives through RE's ongoing communications with district risk committees. These efforts are undertaken to preclude redundancies, to encourage the sharing of ideas throughout the OCC, and also to serve as a resource to district risk committees. A major initiative of 1999 was the creation of the "spillover group," which was charged with a series of tasks to help examiners understand and identify the indirect impact of global economies on bank customers and bank portfolios.

The RE department also served on working groups to identify systemic risks and develop supervisory policies on national bank vulnerabilities to financial risks, as well as early warning systems to identify emerging risks in the banking system. The department also assisted with several studies conducted by the President's Working Group on Financial Markets. In addition, the department played a major role in coordinating the activities related to planning and executing the program of the OCC's Risk Measurement Conference.

Treasury and Market Risk Division

The Treasury and Market Risk (T&MR) division's primary responsibility is the determination of policy direction with respect to capital markets activities. This includes the OCC's supervisory efforts regarding asset/liability management, trading and dealing activities, securitization, mortgage banking, liquidity, derivatives, and emerging market products. The T&MR division accomplishes this through regular monitoring of institutions individually and systemically with regard to specific capital markets activities, in addition to issuing examiner guidance in the form of handbook sections and banking bulletins. In addition, the T&MR staff conducts internal training on related capital markets issues and also participates in mission-critical examinations. The T&MR staff also represents the OCC at numerous internal and external conferences on timely regulatory issues such as asset and liability management, securitization, and trading risk management.

Each quarter, T&MR prepares and publicly distributes the Derivatives Fact Sheet, a comprehensive package of bank derivatives data and information. In terms of

policy development, T&MR provided contributions to the development and issuance of the report of the President's Working Group on Financial Markets, "Over-the-Counter Derivatives Markets and the Commodity Exchange Act." The division helped the Capital Policy division advance the development of policy with regard to the capital treatment of credit derivatives by issuing "Capital Interpretations—Synthetic Collateralized Loan Obligations," an interagency document on the appropriate capital treatment for specific credit derivatives transactions.

During 1999, T&MR participated in two working groups convened to address the supervision of highly leveraged institutions (HLIs). First, T&MR served as a member of the Basel Committee on Banking Supervision's Working Group on Highly Leveraged Institutions. That working group produced two reports in January 1999, "Banks' Interactions with Highly Leveraged Institutions," and "Sound Practices for Banks' Interactions with Highly Leveraged Institutions and Basel Working Group on HLIs," in addition to conducting follow-up work in the latter part of the year. Also, T&MR contributed to the report of the President's Working Group on Financial Markets, "Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management."

To monitor liquidity risk and crisis preparedness in large banks, T&MR developed and maintained internal reporting systems. These systems are complemented by the ongoing implementation of an intensive "current issues" training course on liquidity and interest rate risk for community bank examiners. The T&MR staff regularly monitors financial markets, with particular focus on Y2K considerations, and distributed periodic updates to OCC field examiners. In addition, a member of the T&MR staff served as chair of the FFIEC Y2K Liquidity Subgroup.

The T&MR staff designed and implemented an internal system for field examiners that catalogues information on commonly used interest rate risk models. Thus system is supplemented with an interest rate risk discussion board that facilitates examiner discussion about model specific issues. The division also monitors interest rate risk outliers and provided considerable support to field examiners by leading examinations at a number of national banks.

To clarify risk management expectations and risk-based capital calculations about asset securitization, T&MR drafted the "Interagency Statement on Asset Securitization Practices," published in December 1999. Periodically, T&MR distributes information on securitization volumes and spreads to OCC field examiners, and provides considerable resources to support field examination staff in complex securitization examinations and in requests for comment on bank-specific issues.

In addition to the training initiatives noted above, T&MR sponsored the annual Capital Markets seminar for 165 examiners who primarily perform capital markets supervision work. The T&MR staff coordinated the agenda, which included special training seminars covering topics such as securities and corporate practices issues, bank capital developments, Y2K liquidity, trading lessons learned, accounting issues, asset securitization, mortgage banking, portfolio theory application to loans, and measuring and modeling trading and interest rate risk.

Community and Consumer Policy Division

The Community and Consumer Policy Division (CCP) is responsible for establishing and maintaining supervision and examination policies and procedures governing community reinvestment and development, fair lending, Bank Secrecy Act (BSA) reporting and record keeping, anti-money-laundering (AML), and consumer protection.

Community Reinvestment Act

In 1999, the OCC, along with the other federal financial institution regulators supplemented, amended, and republished its Interagency Questions and Answers Regarding Community Reinvestment, as well as proposed for comment three new or revised questions and answers.

Among other issues, the questions and answers:

- Discuss what examiners should consider when determining whether housing is "affordable" to low- and moderate-income individuals;
- Address the range of factors that examiners may consider in evaluating the innovativeness, complexity, or flexibility of an institution's lending;
- Explain how examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development;
- Discuss how examiners evaluate an institution's activities in connection with "Individual Development Accounts;"
- Revise the interpretation of "promote economic development;" and
- Clarify that exceptionally strong performance by an institution in some aspects of a particular rating profile may compensate for weak performance in others, thus permitting the institution to earn that rating.

During 1999, the OCC also approved Community Reinvestment Act (CRA) strategic plans for two national banks.

Community Reinvestment and Development Specialists

The Community Reinvestment and Development (CRD) program has two specialists assigned to each of the OCC's six districts reporting to the CRD manager in Washington. Specialists provide advice to examiners and other OCC staff on community development topics, trends, and issues concerning consumers. They also assist banks and their community development partners to achieve their local community development goals. The program also has a coordinator who is the primary liaison to the Large Bank Supervision and Bank Organization and Structure divisions. During 1999, the CRD staff:

- Provided technical assistance to bankers and their community partners on options for increasing Community Development lending, investments, and services, including formation of community development corporations (CDCs), investments in small business investment companies (SBICs), Community Development projects, and securities.
- Participated in a number of interagency activities, including publication of "Bridging the Delaware Gap—A Market Profile of the State of Delaware," and continued support of the Sovereign Lending Task Force coordinated with the Affiliated Indian tribes in the Northwest.
- Provided assistance to OCC staff, community groups, and bankers at several forums throughout the year.

Fair Lending

As a result of fair lending examinations, the OCC made three referrals to the Department of Justice for pattern or practice violations of ECOA and Regulation B in 1999. Additionally, the OCC provided fair lending training, to bankers and examiners, at OCC and industry conferences during 1999.

The OCC, in conjunction with the other members of the Federal Financial Institutions Examination Council (FFIEC), is developing an interagency enforcement policy. The policy will create more uniform processing and referral standards for fair lending violations across the bank regulatory agencies.

Bank Secrecy Act and Anti-Money-Laundering Consumer Protection

The OCC issued numerous bulletins in 1999 advising the public and the industry of changes in consumer protection regulations and providing guidance on how to interpret the regulations. Significant issuances included questions and answers on the Joint Interagency Statement of Policy for Administrative Enforcement of the Truth in Lending Act (reimbursement) and a revised handbook booklet providing guidance and examination procedures for the Flood Disaster Protection Act. Examination procedures for the Home Ownership Protection Act, the Children's Online Privacy Act, and the revised Fair Credit Reporting Act are currently under development.

Bank Secrecy Act and Anti-Money Laundering

The Currency and Foreign Transaction Reporting Act, also known as the Bank Secrecy Act (BSA), requires financial institutions to keep records and file reports such as the currency transaction (CTR) and suspicious activity reports (SAR) that have a high degree of usefulness in criminal, tax, and regulatory matters.

Core Policy Department

The Core Policy department is the focal point for the OCC's core policy platforms that govern how the OCC supervises banks. These core policies and activities include the OCC's supervision by risk philosophy and its supporting systems and core examination procedures for large and community banks; policies related to general bank management and boards of directors; policies and interpretations on capital, dividends, earnings, and related bank structure issues; and accounting, reporting, and disclosure requirements for national banks. The deputy comptroller for Core Policy chairs the Supervision Policy and Capital Steering committees, forums for obtaining input on supervision policy and capital issues across functional areas of the OCC.

The department consists of three units: the Core Policy Development division, the Capital Policy division, and the Office of the Chief Accountant.

Core Policy Development Division

Core Policy Development establishes risk-focused policies and standards for the supervision of national banks. The group administers the supervision by risk process; develops and coordinates OCC supervision policy issuances and publications; and develops and distributes automated tools and models used in the examination process.

The risk-focused supervisory process includes a three-level supervision process, consisting of core knowledge, core assessment, and optional procedures for specific bank activity. The benefits of this effort include:

the enhancement of bank safety and soundness through greater integration of supervision by risk into the examination process; a more efficient deployment of OCC resources, while continuing to minimize industry burden; and increased efficiency and consistency through use of a risk-based examination approach.

Significant issues addressed by Core Policy Development in 1999 include: the development of an early warning system, the continuing development and enhancement of computerized models used by examiners in their daily examination activities; and development of guidance for the supervision of bank internal and external audits.

Capital Policy Division

Capital Policy identifies issues and develops policies to address risks to bank capital. This includes developing and maintaining capital regulations and interpretations as well as dividend, income, and expense policies, often in collaboration with other units of the OCC as well as other U.S. and international regulatory agencies.

This division ensures that capital policies are effectively communicated and implemented and provides technical assistance to examiners, bankers, and advisors on risk-based capital issues. The division coordinates the work of the OCC's Capital Steering Committee. It also represents the OCC on the Capital Group and on the Models Task Force of the Basel Committee on Banking Supervision (the Basel Committee). Capital Policy coordinates the OCC's contribution to the ongoing efforts of the Basel Committee to substantially revise the 1988 Basel Capital Accord, which provides the foundation for minimum capital requirements for banks in the U.S. and around the world.

In 1999, the division was instrumental in advancing several interagency changes to, and interpretations of, the risk-based capital regulations. A final rule adopted in 1999 advanced interagency uniformity in the treatment of construction loans on pre-sold residential properties, investments in mutual funds, and real estate loans secured by junior liens on one- to four-family residential properties. This final rule also made the agencies' minimum Tier 1 leverage standards more uniform and simple. Another final risk-based capital rule allows qualifying banks to use internal value-at-risk models to calculate the specific risk component of the market-risk-based capital charge. The Capital Policy division also led the OCC's work on a significant risk-based capital interpretation with respect to innovative uses of credit derivatives that shift the credit risk of a portfolio of loans and loan commitments.

Office of the Chief Accountant

The Office of the Chief Accountant coordinates accounting and financial reporting issues, interprets, and develops guidance on generally accepted accounting principles related to banks, and identifies emerging accounting issues. Training is provided to examiners and others as necessary. This office's objectives are accomplished through staff located at headquarters and district locations. Through representation on the FFIEC's Task Force on Reports, the office coordinates all changes and instructions for interagency bank reports, such as the Consolidated Reports of Condition and Income (call report). In addition, the accounting staff develops and interprets instructions to the call report. The office also participates on the Basel Committee on Banking Supervision (Basel) to seek harmonization of international accounting standards. Further, the financial information requirements of the Securities Exchange Act of 1933, as it applies to national banks under 12 CFR 11 and 12 CFR 16 are administered by the office.

In 1999, the office continued to coordinate and participate, with the SEC and the other banking agencies, in developing documentation and disclosure guidance for loan loss allowances. The office also provided comments on FASB exposure drafts on business combinations and reverse reposessions. In addition, the office issued a joint interagency external audit policy statement for banks not subject to FDICIA audit requirements. Also, examiner guidance was provided on loan loss allowance practices and assessing the materiality of errors in financial statement reporting.

In addition, on-site examiner assistance was provided on a number of banks. Formal and informal responses on numerous accounting, capital, and call report issues were provided to examiners, bankers, and OCC divisions. An intranet site was maintained to provide accounting updates and links to other Web sites for related information.

In regards to the bank reports, the staff coordinated revisions to the bank call report. The Office also continues to lead the interagency efforts to revise the call report in a manner consistent with a bank's public reporting to reduce burden.

Credit Risk Department

The Credit Risk Department is responsible for identifying and analyzing emerging issues and trends that affect bank lending activities and credit risk in the national banking system, as well as developing policy guidance to address

these issues. The department sponsors the National Credit Committee and the Retail Credit Committee, which have representatives from the OCC's districts, the Large Bank Supervision division, the Economics department, and the Community Development division. These committees assist the division in identifying emerging credit risks and supporting policy development initiatives.

During 1999 the department published guidance for bankers and examiners on the following subjects: agricultural lending (handbook booklet); leveraged lending (advisory letter); and subprime lending (banking bulletin). The department also led initiatives that developed and published interagency (FFIEC) guidance on high loan-to-value Residential real estate lending, subprime lending, and the uniform retail credit classification and account management policy. The department also conducted and published the OCC's fifth annual *Survey of Credit Underwriting Practices.*

During 1999, Credit Risk expanded its risk analysis and identification initiatives by establishing a new unit within the department. The Portfolio Analysis and Management group will evaluate the use of credit risk models and modern portfolio management concepts, analyze emerging issues, risks and products such as enterprise valuation and credit derivatives, and will develop systemic credit risk management information and reporting systems. The unit's effort will advance the agency's knowledge of new credit products and support policy development in the area of risk-based capital for credit risk.

The Credit Risk department identifies training needs for field staff and formulates the appropriate training. In 1999, the department developed a training session on structurally weak loans, implemented agency wide training on loan portfolio management, sponsored the OCC's annual Credit Risk Conference, and conducted specialized training for advanced portfolio management and credit scoring.

The department was actively involved in advancing sound credit risk management principles both domestically and internationally. The department was represented on the Basel Committee's Risk Management, Models, and Commercial Real Estate Task Forces, as well as formal and informal interagency (FFEIC) working groups on Real Estate Appraisals, Subprime Lending, and Credit Bureau Reporting. Presentations by management and the staff were made to groups such as Women in Housing and Finance, Robert Morris Associates, Independent Bankers Association of America, American Bankers Association, Consumer Bankers Association, California Bankers Association, the Chief Appraisers Roundtable, and numerous other events for both bankers and examiners.

The department also provided substantial staff assistance to the field by participating in onsite examinations of credit risk and loan portfolio management.

Bank Supervision Operations Department

The primary role of Bank Supervision Operations is direct supervision of national banks, federal branches and agencies, national trust companies, bank data processing servicers and bank data software vendors. During 1999 the OCC committed substantial resources for year-2000 preparedness. Over 3,519 year-2000 examinations were conducted. The OCC also conducted an additional 1,691 examinations focused on banks' overall safety and soundness. More detailed information regarding OCC's direct supervision and historical trends is available in various other sections of this issuance.

Community Bank Activities Division

The Community Bank Activities division was created in June 1999 in recognition that the vast majority of the numbers of banks supervised by the OCC are community banks. The purpose of this division is to coordinate efforts to relieve regulatory burden in community banks; identify community bank issues and propose courses of action; assure that district offices are receiving the support they need in carrying out the OCC's community bank supervision program; and identify and develop additional useful services for nationally chartered community banks.

In 1999, the Community Bank Activities division was involved in several key initiatives focused on reducing the regulatory burden for community banks. In an advanced notice of proposed rulemaking, the OCC asked for public comment on four areas of regulation: corporate activities and transactions, lending limits, corporate governance, and capital requirements. The advanced notice of proposed rulemaking also solicited public comment on burdensome requirements preventing banks from performing their daily operations efficiently. In an additional effort to reduce regulatory burden, the OCC codified a number of interpretive letters to make it easier for community banks to satisfy certain corporate requirements.

During 1999 the Community Bank Activities division organized four major outreach meetings in New York, Chicago, Little Rock, and Nashville. District deputy comptrollers invited small groups of community bankers to attend these roundtable sessions, meet the Comptroller, and exchange views on community bank issues. These meetings served to maintain open lines of communication and identify emerging community bank issues.

The division participated in the development of the National Banknet extranet, a simple, user-friendly Internet-based system that gives bankers access to accurate and timely data on a secure platform. The Comparative Analysis Reporting (CAR), the first National Banknet offering, allows community banks to compare their financial performance with up to six peer banks. When fully operational in 2000, National Banknet will become a significant communication medium between national banks and the OCC.

Supervision Support Department

The primary role of the Supervision Support department is to support other Bank Supervision Operations divisions, including field examiners. The Supervision Support department includes four distinct divisions: Special Projects and Programs, Quality Assurance, Special Supervision/Fraud, and Supervisory Data. The Supervision Support department coordinates the OCC's Shared National Credit Program, administers the uniform commission examination, supervises troubled banks, oversees a quality assurance program within Bank Supervision Operations units and produces information about banks supervised by the OCC and information about the OCC's internal processes.

Special Projects and Programs Division

This division administers the Shared National Credit, International Examination, and Uniform Commission Examination programs. The Shared National Credit Program is an interagency program that reviews the largest syndicated loans in the banking system. During 1999, approximately 4,300 credit facilities totaling $750 billion of credit extended by the national banking system were reviewed. The unit is responsible for the scheduling and coordination of the approximately 400 national bank examiners utilized in the process. One of the primary new initiatives this past year in the Shared National Credit Program was the development of a new database and the development of entirely new technology to support the program. The International Examination Program is an administrative program that provides support to examiners performing overseas examinations. The program provided administrative support for approximately 35 overseas examinations conducted during 1999. The Uniform Commission Examination program administers the testing process for determining examiners' readiness to receive the designation of "national bank examiner." Approximately 80 examiners were tested in 1999.

In addition to the programs mentioned above, the division conducts project activities requested by the senior deputy

comptroller for Bank Supervision Operations. During 1999, this unit played a significant role in the Comptroller's "Community Bank Activities" initiative. This initiative focused primarily on improving OCC outreach efforts to community bankers. Other projects for 1999 included: developing a Problem Loan School for examiners, establishing an intranet site for employees on career paths and opportunities at the OCC, updating the Problem Bank School, participating in the Structurally Weak Loan Underwriting project, and leading a team involved in the development of the Large Bank Examiner View and Information System.

Quality Assurance Division

The Quality Assurance (QA) division is responsible for helping all bank supervision units assure themselves that the objectives of the bank supervision process are being achieved. The division coordinates staffing of QA reviews and monitors the reviews to ensure that they follow national QA program guidelines.

The QA division administers comprehensive pre-delivery and post-delivery quality assurance programs for both the large bank and the mid-size/community bank lines of business. The QA programs cover safety and soundness as well as compliance, asset management, and BIS supervision activities. All QA program activities culminate in an annual certification by all district and large bank deputy comptrollers that banks in their district or large bank portfolios are being effectively supervised and that their bank supervision processes conform with OCC policy. These annual certifications also highlight innovative bank supervisory practices identified through QA activities as well as any systemic concerns observed within their units.

In addition, the QA division consolidates district and large bank findings into an annual report that highlights best practices and problematic quality assurance trends, which may be common to several of the certifying units. The QA division works with managers throughout the agency to develop mutually acceptable resolutions to the root causes of these issues. The division subsequently monitors corrective action commitments that were put in place to deal with issues identified in the annual certifications.

Special Supervision/Fraud Division

The Special Supervision/Fraud division consists of problem-bank and fraud specialists. The special supervision analysts supervise those national banks in critical condition, monitor failing banks, coordinate bank closings, and help determine OCC policy for the examination and enforcement of problem banks. Fraud specialists are located in each district, the Large Bank Supervision division, as well as headquarters, and provide support and expertise on fraud-related issues.

The division's special supervision analysts are the focal point for managing most critical bank situations in which potential for failure is high. An anticipatory approach is used in resolving these critical bank situations. The division deals with each bank individually, employing enforcement and administrative tools best suited to that bank's problems. The special supervision analysts approve the scope of examination activities, hold meetings with management and boards of directors, review corporate-related applications, and process reports of examination and correspondence for these banks.

The special supervision analysts also provide general advice and guidance on problem-bank issues to district offices and other OCC units, and develop examination strategies to enhance OCC's relationship with problem banks. The division tracks district trends in problem banks and monitors for consistency of treatment. The Special Supervision/Fraud division helped develop and teach the Problem Bank School. During 1999 the division also developed and piloted a new Failure Management School. The special supervision analysts frequently represent the OCC at meetings with foreign regulators who seek out specialized problem-bank knowledge.

The division's fraud specialists serve as liaisons for field staff and management on fraud-related issues, and participate on examinations to provide expertise in complex investigations. They frequently testify in court on examination and fraud findings or as expert witnesses. They advise district and large bank staff and conduct outreach meetings on various fraud topics. The fraud specialists also develop and maintain contacts with law enforcement organizations and other agencies.

Supervisory Data Division

The Supervisory Data division supports OCC management and staff decision making by analyzing and developing management information reports on bank supervision-related matters. The division accomplishes this by periodically producing and distributing various reports and applications covering examination and supervision tracking, early warning screens and ranking reports, bank financial filters and risk assessment reports, as well as responding to various ad-hoc information requests.

In 1999, the division continued as the focal point for quarterly data collection and reporting on the status of year-2000

remediation efforts of OCC-supervised institutions. The division's primary ongoing activities included providing reports on year-2000 examination status and summary evaluation data to internal and external parties.

Supervisory Data played a major role in 1999 in advancing the agency's Web-based products and capabilities. The division coordinates Internet and intranet activities for Bank Supervision Operations. The division was also instrumental in deploying the agency's National Banknet extranet site and the Comparative Analysis Reporting (CAR) application. Other Web-based products and data collection mechanisms developed or coordinated by the Supervisory Data division assist various OCC units with data needs.

Through the division's financial analysts, located in each of OCC's six district offices, supervision and operational information for district-supervised banks is provided on a regular basis.

Large Bank Supervision Department

The Large Bank Supervision department supervises all national bank subsidiaries of the following 29 companies: ABN AMRO North America; BancOne Corporation; BankAmerica Corporation; Bank of Boston Corporation; Barclays Global Investors, N.A.; Chase Manhattan Corporation; Citicorp; First American Bank Corp.; Firstar Corporation; First Security Corporation; First Tennessee National Corp.; First Union Corporation; Fleet Financial Group; Huntington Bancshares; KeyCorp; MBNA Corp.; Mellon Bank Corporation; Mercantile Bancorporation; National City Corp.; PNC Bank Corp.; Republic New York Corporation; SouthTrust Corporation; SunTrust Banks, Inc.; Union Bancal Corporation; Union Planters Corporation; U.S. Bancorp; Wachovia Corp.; Wells Fargo Corporation; and Zions Bancorporation. As of September 30, 1999, these 29 holding companies held assets of $3.4 trillion. Under these companies, there are 136 national banks and 26 national trust charters with total assets of $2.6 trillion, representing 82 percent of the total assets of the national banking system, but only 6 percent of the charters. By year-end 1999, the total number of holding companies with national bank subsidiaries supervised by the department will decline to 25 through acquisition, merger, or conversion activity.

The department is headed by three deputy comptrollers, each managing a portfolio of banks and directly supervising examiners-in-charge of the respective institutions. The field examining staff is divided into four geographically based teams. These teams consist of field examiners who support the continuous supervision efforts in each bank. The department also maintains another team in London. That team provides examination and supervision support for European affiliates and branches of national banks. It plays a major role in monitoring developments in the European financial markets.

The department's philosophy of continuous supervision provides for assessing the condition and risk profile of the bank and taking appropriate supervisory and regulatory action when necessary. To implement this philosophy, supervisory strategies are developed annually for each large bank company and are updated quarterly. Strategies are continuous and relate closely to each company's condition, risk profile, economic factors, and marketplace developments. A major component of each strategy is the communication plan. This plan must maintain a strong, consistent, and frequent two-way dialogue with bank management and its board of directors. Areas of special supervisory emphasis in 1999 included supervisory initiatives in credit underwriting, large bank Community Reinvestment Act, year-2000 compliance, anti-money laundering, audit/internal controls, insurance, and asset securitization.

Compliance Operations Department

The Compliance Operations department was formed in June 1998. The purpose of this department is to implement OCC consumer compliance policy and provide expert advice to the districts and large banks to ensure efficient, consistent, and effective consumer compliance supervision of national banks. Compliance Operations works closely with Community and Consumer Policy. Compliance Operations is headed by a deputy comptroller. All compliance specialists in the districts and in the large banks report directly to the Compliance Operations department. Front-line managers consist of six district team leaders and four large bank geographic team leaders.

Several important initiatives were completed during 1999. A liaison structure was fully implemented whereby all assistant deputy comptrollers and Large Bank examiners-in-charge were assigned a compliance liaison to provide advice and counsel on consumer compliance, fair lending, Community Reinvestment Act, and Bank Secrecy Act. Formalized compliance liaison responsibilities and customer service standards were also put into place during the year. Lastly, a complete pre-delivery quality control process for banks subject to large bank CRA procedures was also implemented in 1999.

Continuing Education and Resource Alternatives Department

The Continuing Education and Resource Alternatives department provides a variety of services to meet the training and development needs of OCC employees. These services

include consultation and instructional design, identifying knowledge gaps, internal schools developed by subject matter experts, self-study courses, vendor-based courses conducted at OCC sites, and numerous external training options. Continuing Education is organized into three teams: Design/Development, Customer Services, and Support and Delivery.

The Design/Development team is responsible for the development and maintenance of technical (examiner) and management courses. The team is comprised of technical, management, MIS designers, and course administrators. This group uses a variety of delivery methods, including computer-based training (CBT) on the intranet, interactive compact disks, and traditional classroom training. Design/Development works closely with other OCC departments to develop internal courses. When practical, Design/Development also uses off-the-shelf vendor-based products to meet specific training needs.

The Customer Services team is responsible for identifying training courses and tools that meet employees' training needs. The team includes all district training officers and their staff, the Washington and Large Bank training officers, and a management analyst. The training officers serve as primary contact for their serviced employees. They provide advice and counsel on available training courses, both internal and external; manage the internal and external course registration process; and communicate training policies and procedures to their customers. The Customer Services team also manages the Career Development Initiative, a program that encourages support staff to pursue training, education, and developmental assignments that can help them advance in their careers.

The Support and Delivery team manages the administrative functions related to the delivery of OCC internal training, Federal Financial Institutions Examination Council courses, and registration through the external training program. This team works together with the other Continuing Education teams in assessing training needs and determining how to integrate technology in the design and delivery of training. Support and Delivery also maintains Continuing Education's intranet site, which includes the internal course request system, the external training program application, outside vendor information, training schedules, a resource library, and many pre-course materials.

The Resource Alternatives unit manages three sources of temporary resources—the Resource Group, the National Bank Examinations Contracting Program, and the Opportunities Board. The Resource Group is a pool of experienced personnel who serve as full-time internal consultants. These individuals are available to staff special projects and meet other short-term staffing needs throughout the agency. The National Bank Examinations Contracting Program arranges for qualified contractors to fill short-term examination staffing needs. The Opportunities Board is an agency-wide bulletin board used to solicit nominations for special projects and rotational assignments. This forum is designed to promote awareness of and access to developmental opportunities for all OCC employees.

Accomplishments for 1999 include development and implementation of the Career Development Initiative, a comprehensive career development program for support staff; implementation of the Examiner Development Initiative, an in-depth training program to increase expertise in the specialty examining areas, and expanded use of technology in the delivery of training to OCC employees.

Office of the First Senior Deputy Comptroller and Chief Counsel

In 1999, the first senior deputy comptroller and chief counsel (chief counsel) continued the function of advising the Comptroller on legal matters arising from the administration of laws, rulings, and regulations governing national banks. The chief counsel was responsible for directing the legal functions in and for the OCC, including writing and interpreting legislation; responding to requests for interpretations of statutes, regulations, and rulings; defending the Comptroller's actions challenged in administrative and judicial proceedings; supporting the bank supervisory efforts of the office; and representing the OCC in all legal matters. These duties were carried out through two deputy chief counsels and two assistant chief counsels. One deputy counsel was responsible for overseeing Bank Activities and Structure, Enforcement and Compliance, Litigation, Securities and Corporate Practices, and the six district counsels; and the other was responsible for Administrative and Internal Law, Community and Consumer Law, the Counselor for International Activities, and Legislative and Regulatory Activities.

The chief counsel in 1999 advised the Comptroller on policy matters involving corporate activities and had responsibility for overseeing the OCC's corporate activities area. The Comptroller delegated authority for deciding all corporate applications, including charters, mergers and acquisitions, conversions, and operating subsidiaries of national banks, to the chief counsel. These responsibilities were carried out through the deputy comptroller for Bank Organization and Structure, the District/Large Bank Licensing division, the Licensing Policy and Systems division, the Washington-Directed Licensing division, and the licensing units in each of the OCC's six district offices.

The chief counsel also advised the Comptroller on matters involving community affairs and had responsibility for overseeing the OCC's community affairs activities, including approval of national bank community development investments. These responsibilities were carried out through the deputy comptroller for Community Affairs, the Community Development division, the Community Relations division, and the Minority and Urban Affairs division.

Administrative and Internal Law Division

The Administrative and Internal Law (AIL) division is responsible for providing legal advice and service on issues and matters relating to the OCC's operations as a federal agency. The division is also responsible for assisting the chief counsel in various aspects of the law department's internal operations.

AIL has specialized experience in a number of legal areas associated with the OCC's administrative functions including: equal employment opportunity, compensation and benefits, personnel actions, procurement, leasing, licensing agreements, finance, the Freedom of Information Act, the Privacy Act of 1974, and ethics. In 1999, AIL continued to provide legal advice in these areas to units throughout the OCC. Among other things, it provided advice on proposed changes to the OCC compensation plan and it reviewed the OCC's compliance with the Privacy Act of 1974. As in previous years, the division, in conjunction with the district legal staffs, also administered the OCC's ethics program and the law department's attorney recruitment program.

Assistant Chief Counsels

Two assistant chief counsels are responsible for providing legal counsel and policy advice in the critical areas of electronic banking and bank customer privacy.

The assistant chief counsel responsible for electronic banking issues provided counsel on proposed bank activities including the establishment of Internet banks, digital identity certification, electronically based finder activities, electronic bill presentment and payment, Web site development, and data processing services; assisted in speech and testimony preparation on electronic banking topics for the Comptroller and chief counsel; and participated in the establishment and issuance of supervisory policy related to Internet banking and e-commerce. The assistant chief counsel also established and implemented departmental readiness and contingency plans for the year-2000 century date change.

The assistant chief counsel responsible for bank customer privacy issues provided analysis and recommendations related to financial modernization legislation and represented the OCC in interagency privacy rulemaking under the Gramm–Leach–Bliley Act and the Fair Credit Reporting Act. The assistant chief counsel chaired the OCC's Privacy Working Group, which produced bank advisory letters on effective practices for complying with the Fair Credit Reporting Act and for establishing privacy policies and publishing them on bank Web sites, and also represented the OCC in an interagency survey of bank Web site privacy policies. Other accomplishments included assistance in speech and testimony preparation and a review of bank relationships with telemarketing companies.

Bank Activities and Structure Division

The Bank Activities and Structure (BAS) division provides legal advice on corporate structure matters such as chartering national banks, branching, main office relocations and designations, operating subsidiaries and investments in other entities, mergers and acquisitions, interstate operations, management interlocks, and changes in bank control. The division also advises on issues relating to general bank powers and activities, special purpose banks, lending limits, leasing activities, loans to insiders, affiliate transactions, bank premises, other real estate owned, and failing banks. These questions arise under such laws as the National Bank Act, Gramm–Leach–Bliley Act, Riegle–Neal Interstate Banking and Branching Efficiency Act, Federal Reserve Act, Federal Deposit Insurance Act, FDIC Improvement Act, Bank Holding Company Act, Bank Merger Act, Change in Bank Control Act, Depository Institution Management Interlocks Act, and the Financial Institutions Reform, Recovery, and Enforcement Act.

The Bank Activities and Structure division provides legal advice and service to other units within the OCC, such as Bank Organization and Structure, Large Bank Supervision, Bank Supervision Policy, International Banking and Finance, and Special Supervision/Fraud. It provides advisory services to national banks, the banking bar, other banking regulators, and the public as well. In developing its legal positions, the division works closely with other law department units, including the OCC's district legal staffs.

Significant BAS legal opinions and activities during 1999 included the following:

Branching

BAS drafted a corporate decision approving in-state branches by four national banks in Oklahoma, based upon the *Deposit Guaranty* principle. This analysis (developed by the OCC in the 1980s and affirmed by the courts) permits national banks to enjoy the same branching rights as state-chartered thrift institutions if certain conditions are met. This was the first approval of *Deposit Guaranty* branching in Oklahoma. Another decision drafted by BAS applied a *Deposit Guaranty* analysis to mobile branching for the first time.

Expanded Activities

BAS drafted a legal opinion approving an innovative proposal that allowed a lending bank to make use of federal income tax credits that are available to property owners who renovate historic buildings. The borrower in this case was unable to use the credits, but by devising a way for the bank to obtain them, it was possible to both lower the customer's cost of borrowing and increase the return to the bank.

Two legal opinions drafted by BAS concluded that national banks with fiduciary powers may both market their services to customers and perform trust services in states other than their home states, and that state laws that would prohibit or restrict these activities are preempted. These two letters provide a firm legal foundation for national banks to provide trust services on an interstate basis.

Bank Charters

BAS helped to draft a decision document conditionally approving an application to charter NextBank, N.A., San Francisco, California, a limited purpose credit card bank that will operate solely over the Internet. The application and approval process for the bank's credit card will be done entirely online in real time, the first bank to offer these features. This was the OCC's first approval of an Internet-only credit card bank.

BAS drafted a decision document conditionally approving an application to charter CIBC National Bank, Maitland, Florida. The bank will have no brick-and-mortar offices, but instead will serve customers primarily through ATMs, the Internet, and a telephone call center accessible by a toll-free number. A notable feature of CIBC National Bank will be its use of kiosks in supermarkets, staffed on a part-time basis by customer service representatives who will provide loan and deposit production services. All of the electronic delivery channels referred to above will be offered at the kiosks. This was the third charter proposal filed with the OCC for a national bank that will deliver products and services primarily through electronic means.

Minority Investments

A BAS opinion approved noncontrolling investments by a consortium of four national banks, including one large regional bank and three minority-owned or minority-controlled banks, in a limited liability company (LLC) that engages in personal property leasing and related services. The LLC is structured so as to qualify as a Minority Business Enterprise certified by the Michigan Minority Business Development Council. It therefore helps to advance that organization's goals to promote minority business, and provides valuable business opportunities for the participating minority banks. This is an example of how the power to make noncontrolling equity investments, which the OCC has developed and refined over the last several years, can be used to create increased business opportunities for small and minority-owned national banks.

Technology

BAS drafted a decision that approved noncontrolling equity investments by two national banks, through operating subsidiaries, in a limited liability company engaging in research and development activities in preparation for the establishment of a digital identity certification service for commerce over open networks, including the Internet. These activities include such things as purchasing systems and technologies, developing marketing and branding materials and strategies, and conducting pilot tests. The decision represents another step in national banks' expansion into electronic activities.

Two decisions written by BAS approved noncontrolling investments, through operating subsidiaries, in limited liability companies that will engage in Internet electronic bill payment and presentment services, and related data transmission. These decisions demonstrate the continued expansion of national banks into Internet banking.

Transaction Involving a Thrift Institution

A decision statement written by BAS approved a merger of Bank of America, N.A., Charlotte, North Carolina, and its affiliate thrift institution, Bank of America, F.S.B., Salt Lake City, Utah. The transaction consisted of several steps, requiring approvals by both the OCC and the Office of Thrift Supervision. Although there have been previous conversions of federal savings banks to national bank charters, and interstate mergers between national banks have been authorized by the Riegle–Neal Act for several years, the large size of these institutions and the cross-country scope of the merger made this transaction notable.

Community and Consumer Law Division

The Community and Consumer Law (CCL) division provides legal interpretation and advice on consumer protection, fair lending, and community reinvestment issues. The division is also responsible for providing legal advice on issues related to bank community development powers and activities, including activities conducted within the bank, investments in community development corporations and projects, and participation in community development financial institutions. In addition, the division provides advice regarding community protests of mergers and acquisitions by national banks.

Within the OCC, CCL is the primary source of legal assistance and service to the agency's supervisory personnel and community development specialists as well as national banks, the banking bar, and the public with respect to consumer protection, fair lending, and community reinvestment issues.

The division's staff provided the legal analysis on a variety of issues, which are summarized below.

Legal Opinions

CCL prepared three letters in which the Comptroller addressed a wide range of issues related to consumer credit that had been raised by Members of Congress or consumer or community organizations. These letters articulated the OCC's views and policies with respect to payday lending, subprime lending generally, and alleged unfair or fraudulent practices by credit card companies.

CCL prepared two letters in which the Comptroller addressed issues relating to the Community Reinvestment Act that had been raised by community organizations. One of these letters discussed the issue of credit access for minority-owned small businesses. The other letter focused upon the OCC's efforts to ensure that financial modernization legislation would strengthen, and not weaken, the CRA.

Corporate Applications

CCL provided legal advice and assistance in connection with the approval by the OCC of an application to charter a national credit card bank that would operate almost wholly over the Internet. The decision discussed both the bank's proposed privacy policy and the OCC's approval of the bank's request to be designated as a limited purpose bank for purposes of the Community Reinvestment Act. The chartering process raised novel issues regarding the application of consumer protection laws, and CCL provided legal advice and assistance in connection with these issues, including the Real Estate Settlement Procedures Act and the delivery of electronic disclosures and statements under the Truth in Lending Act.

CCL provided legal advice and assistance in the consideration and approval of an application to charter a national bank that would operate primarily through kiosks located in grocery stores equipped with deposit-taking ATMs, computer terminals connected to the bank's Internet web site, and telephone connections to bank representatives. CCL helped to draft that part of the decision that discussed both the bank's proposed privacy policy and its plans related to the CRA, including plans for delineating CRA assessment areas.

CCL played an active role in connection with the OCC's approval of the merger of NationsBank, National Association (NationsBank) with and into Bank of America National

Trust and Savings Association (BANTSA). Although the OCC did not directly receive any letters commenting on the bank merger application submitted to this office, CCL participated in an extensive review of comments received by the Board of Governors of the Federal Reserve System (Board) in connection with the application to merge the banks' holding companies. CCL also assisted in the consideration of testimony received by the Board and two Federal Reserve banks in connection with that application. In light of the concerns expressed, the OCC removed the application from expedited review processing and directed examiners to conduct both on- and off-site investigations relating to specific convenience and needs and CRA-related allegations. The investigation and analysis of the issues raised indicated no basis for denying or conditioning the approval of the application.

CCL also provided legal advice and assistance in connection with the OCC's approval of U.S. Bank, National Association's proposal to acquire Southern California Bank and Santa Monica Bank. During the review of the application, the OCC received several comments from community organizations and elected officials from California. The commenters raised concerns about branching, all three banks' small business and consumer lending, and U.S. Bank's proposed community investment plan for California. Prior to rendering a decision, the OCC convened a private meeting regarding the impact of the proposed merger on affected geographies. Representatives from two of the banks that were parties to the merger, over 25 community organizations, the Los Angeles Housing Department, and three public officials attended the meeting.

Other Matters

CCL drafted the interagency questions and answers regarding community reinvestment, published by the FFIEC. 62 *Fed. Reg.* 23,618 (May 3, 1999). This document contains informal staff guidance for agency personnel, financial institutions, and the public about Community Reinvestment Act issues.

Counselor for International Activities

The Counselor for International Activities (IA) serves as the law department's focal point for international banking issues relating to foreign banks' operations in the United States, as well as foreign operations of domestic banks. On such issues, IA provides legal advice to OCC supervisory offices and other divisions of the law department.

In 1999, IA provided advice on a number of issues relating to cooperation and exchange of information among bank supervisors of various countries. For instance, it has:

- Provided counsel on matters arising in the Basel Committee for Bank Supervision and the Joint Forum on Financial Conglomerates as these groups studied exchange of information and cooperation by supervisors of financial institutions;
- Worked closely with the Treasury Department and other regulators in addressing these issues in the Group of 7 context;
- Provided counsel to various inter- and intra-agency working groups relating to cross-border and offshore banking issues; and
- Worked closely with the Board of Governors of the Federal Reserve on issues relating to bilateral arrangements with foreign bank supervisors to exchange supervisory information. An information-sharing and cooperation framework with the European Commission was concluded, as well as an information-sharing arrangement with the Argentine bank supervisors.

IA also continued to work on other issues considered by the Basel Committee for Bank Supervision, and has continued to work closely with the Treasury Department on regulatory and supervisory matters regarding international banking and trade.

In other matters, in 1999, IA provided advice on various aspects of international banking and on legal issues affecting foreign banks, such as:

- The authority of a federal branch to act as agent in brokering certain overseas securities held by its parent foreign bank as principal;
- The authority of foreign banks to establish federal branches and agencies, intra- or interstate, in the United States, and issues arising from mergers of foreign banking institutions and the impact of those mergers on the U.S. operations of the involved institutions;
- The authority of foreign banks to establish loan production offices in the context of their federal branches and agencies;
- Year-2000 preparations;
- Financial modernization, regulatory burden reduction, and anti-money-laundering legislation;
- The "Federal Branches and Agencies Supervision" booklet of the *Comptroller's Handbook;* and
- The "Federal Branches and Agencies" booklet of the *Comptroller's Corporate Manual.*

In addition, IA has worked closely with other divisions on legal issues relating to national banks' activities overseas, and the acquisition of national banks by foreign entities.

Enforcement and Compliance Division

The Enforcement and Compliance (E&C), division in conjunction with the districts, conducts investigations, recommends administrative actions, and litigates those actions on behalf of the OCC in administrative proceedings. E&C may defend these actions if they are challenged in United States courts of appeals. E&C also defends challenges to temporary cease-and-desist orders and suspensions that have been filed in district court. The division supports criminal law enforcement agencies and provides advice on enforcement and compliance issues to senior OCC officials.

Administrative Actions

E&C is responsible for nondelegated actions against individuals and banks, while the OCC's districts are responsible for delegated actions. In addition to adjudicating its administrative cases, E&C conducted numerous investigations in 1999.

During 1999, the OCC issued 16 cease-and-desist orders against individuals, including 12 restitution orders. Restitution ordered in 1999 totaled $5,630,060. The OCC also imposed 45 civil money penalties (CMPs) on individuals, totaling $1,891,096, and issued 11 letters of reprimand and 26 supervisory letters. In addition, the OCC issued 30 removal and prohibition orders.

The OCC issued two CMPs against banks, totaling $55,000. Eleven cease-and-desist orders were issued against banks, along with one safety and soundness order, 31 formal agreements, 28 memoranda of understanding, and 37 commitment letters. A comprehensive listing and description of the noteworthy formal enforcement actions taken by the OCC in the first half of 1999 appears in the September issue of the *Quarterly Journal*, "Special Supervision/Fraud and Enforcement Activities." For the last half of 1999, see the same section below in this issue. In addition, E&C continued its Fast Track Enforcement Program (initiated in 1996), which helps ensure that bank insiders and employees who have committed criminal acts involving banks, but who are not being criminally prosecuted, are prohibited from working in the banking system.

Year-2000 Enforcement Actions

In 1999, the OCC continued to take enforcement actions to require national banks' compliance with interagency guidance on preparing their computer systems for the year-2000 conversion. The OCC issued 45 supervisory directives for year-2000 problems in 1999, down from a total of 330 for 1998. The large drop in supervisory directives is attributable to two factors. First, the industry attained a high level of compliance with year-2000 guidelines. Second, for those few banks that lagged behind, the OCC relied more on the Part 30 Safety and Soundness Order process in 1999 to insure quicker responses by those banks. Included in the enforcement actions against banks tallied in the preceding section were one safety and soundness order, two formal agreements, six memoranda of understanding, and six commitment letters for year-2000 deficiencies.

Law Enforcement Support

In the past year, E&C continued to provide documents, information, and expertise to local, national, and international law enforcement authorities. In conjunction with the offshore banking and fraud unit in the Special Supervision/Fraud division, E&C issued a total of 13 alerts in 1999.

E&C continued to work closely with the interagency Bank Fraud Working Group (BFWG), which is chaired by the Department of Justice (DOJ). The BFWG continues to work to improve coordination and cooperation between the federal financial institutions regulatory agencies, DOJ, and the other law enforcement and regulatory agencies. During the past year, with E&C input, the BFWG has been working to revise its interagency Bank Fraud Directory. E&C also continued to chair the BFWG's subgroup on check fraud, which focuses on the nature and extent of check fraud in the country, and to participate in the BFWG's subgroup on cyberbanking. Finally, E&C worked with FinCEN and the other federal financial institution regulatory agencies to develop an enhanced Suspicious Activities Report form.

As part of the OCC's anti-money-laundering efforts, E&C participated in the National Anti-Money-Laundering Group, which functions as the OCC's central coordinating body for all of the agency's anti-money-laundering efforts. Among the group's accomplishments in 1999 were continuation of the program for targeting banks that may be susceptible to money laundering and issuance of Bank Secrecy Act compliance program guide. The OCC also continued to participate in a number of interagency groups focused on combating money laundering, including the Bank Secrecy Act Advisory Group.

Legislative and Regulatory Activities Division

The attorneys in the Legislative and Regulatory Activities (LRA) division draft the OCC's regulations, provide legal

support for the OCC's legislative work, provide legal advice on issues relating to national banks' regulatory capital requirements, and work on a variety of other projects as directed by the chief counsel or the deputy chief counsel.

Legislation

Work on financial modernization legislation was one of LRA's most significant projects in 1999. The 106th Congress passed the Gramm–Leach–Bliley Act (GLBA), which the President signed into law on November 12, 1999. The GLBA comprehensively restructures the statutory framework that governs the conduct of financial activities, including banking, securities, and insurance, in the United States. LRA attorneys supported the OCC's work on this legislation by analyzing the House and Senate bills as they moved from introduction to passage on the floor of each body and by providing technical and drafting assistance to congressional staff. After the GLBA was enacted, LRA assisted in preparing summaries of its key provisions for use by OCC staff.

Regulations

In 1999 LRA attorneys worked with staff in other divisions of the law department and throughout the OCC to prepare several rules, covering a wide range of legal and supervisory issues. Toward the end of the year, the division began work on several rules that are required to implement the GLBA. These include a rule implementing the new financial subsidiary authority that the GLBA provides to national banks, and rules to be issued jointly with other federal agencies to implement the new statutory privacy provisions and the provisions requiring disclosure and reporting of certain CRA-related agreements between banks and nongovernmental entities.

Revisions to the following rules were among the most significant regulatory actions that the OCC completed in 1999:

Parts 1, 5, and 7: Bank Activities and Operations

This final rule was published on November 4, 1999, and took effect on December 6, 1999. It appears at 64 *Fed. Reg.* 60092.

Most of the provisions in this final rule amended Part 7 of the OCC's regulations, which was re-titled "Bank activities and operations." The rule amended the messenger service rule to conform to recent caselaw that streamlined the criteria for determining when a national bank is operating a "branch." It also codified prior OCC interpretations pertaining to directors' qualifying shares, the purposes for which a national bank may acquire and hold its outstanding shares, and the circumstances under which a national bank may engage in a reverse stock split. In addition, the rule clarified the scope of the OCC's visitorial powers pursuant to 12 USC 484. The rule also codified interpretations that automated teller machines, remote service units, and deposit production offices are not branches, either individually or in combination, and are not subject to state imposed licensing, geographic, or operational restrictions.

Part 24: Community Development Corporations, Community Development Projects, and Other Public Welfare Investments

This final rule was published in the *Federal Register* on December 20, 1999 and takes effect on January 19, 2000. The rule appears at 64 *Fed. Reg*. 70986.

The final rule revises Part 24 by:

(1) expanding the scope of public welfare investments activities which national banks may self-certify;

(2) recategorizing the list of investments eligible for self-certification as examples of qualifying public welfare investments;

(3) removing the community benefit information requirement in self-certification letters and investment proposals;

(4) removing the local community investment requirement for self-certification so that national banks can use the self-certification process to make eligible public welfare investments in *any* area;

(5) adding as an additional factor to the regulation's nonexclusive list of ways that a national bank may demonstrate community support or participation for its public welfare investment the receipt of federal low-income housing tax credits by the project in which the investment is made;

(6) eliminating the requirement that a bank demonstrate that it is not reasonably practicable to obtain other private market financing for the proposed investment in order for it to qualify as a public welfare investment;

(7) revising the former list of investments eligible for self-certification, which now provides examples of permissible public welfare investments, to:

(a) provide that projects receiving low-income housing tax credits need not include non-profit participation, and

(b) include investments in community development financial institutions, as defined in 12 USC 4702(5); and

(8) clarifying that if a national bank wants to make loans or investments that are designed to promote the public welfare and that are authorized under provisions of the banking laws other than paragraph 11 of section 24, it may do so without regard to the provisions of 12 USC 24(Eleventh) or Part 24.

Part 26: Management Official Interlocks

The OCC and the other federal banking agencies jointly published this final rule in the *Federal Register* on September 24, 1999. The final rule appears at 64 *Fed. Reg.* 51673.

This regulation amended the agencies' management interlocks rules to reflect recent changes to the Management Interlocks Act. The new statutory provisions, and the amendments to the agencies' regulations:

(1) Increase the asset size amounts for purposes of applying the so-called major assets prohibition—the prohibition against interlocks between management officials of unaffiliated depository organizations of a certain size, regardless of the location of the organizations; and

(2) Broaden the exemptive authority that is available to the agencies.

Part 30: Y2K Standards for Safety and Soundness

The OCC and the other federal banking agencies jointly published this final rule and uniform final guidelines in the *Federal Register* on November 29, 1999, effective upon publication. The rule and guidelines appear at 64 *Fed. Reg.* 66700.

The final guidelines describe steps that national banks (and other insured depository institutions) were required to take to ensure that their mission-critical systems were year-2000 (Y2K) ready. The final uniform guidelines made only minor technical changes to the interim guidelines, which had been in effect since October 15, 1998.

Part 30: Y2K Standards for Safety and Soundness for National Bank Transfer Agents and Broker-Dealers

These interim guidelines were published in the *Federal Register* on September 30, 1999, and took effect upon publication. The guidelines appear at 64 *Fed. Reg.* 52638.

These guidelines supplement the Y2K Safety and Soundness Standards by addressing national bank transfer agent and broker-dealer activities that may not be mission-critical in a particular bank. These guidelines impose two requirements. First, no later than November 1, 1999 each bank transfer agent and broker or dealer was required to identify all transfer agent and broker or dealer systems that were not Y2K ready. Second, by November 15, 1999, the bank transfer agent, bank broker or dealer was required to develop and implement an effective business resumption contingency plan for each system that was not Y2K ready.

Preemption Decisions

OCC Interpretive Letter No. 866, dated October 8, 1999, addressed the extent to which federal law preempts state restrictions on a national bank's ability to engage in certain fiduciary activities. This letter concluded that, for purposes of 12 USC 92a, a national bank is "located" in the state where it performs core fiduciary functions. Under the circumstances presented here, the national bank is subject to Michigan law. Section 92a preempts the law of any other state that purports to restrict the bank's exercise of its federally authorized fiduciary powers. Thus, the bank may solicit trust business, and may maintain trust representative offices, in the state where it is "located" and in any other state. *See also* OCC Interpretive Letter No. 872, dated October 28, 1999 (similarly concluding that California laws purporting to restrict the ability of an Ohio national bank to open trust representative offices or full-service trust offices are preempted by Section 92a).

Two *Opinion Letters*, dated October 25, 1999 and October 27, 1999, dealt with 12 CFR 7.4002, the OCC's regulation governing non-interest charges and fees. That regulation provides that the establishment of charges and fees is a business decision to be made by each national bank. The regulation further provides that a bank reasonably establishes such charges or fees if it considers four specified factors. The letters conclude that a bank that considers these four factors in the decision-making process it uses to establish fees has satisfied the OCC's supervisory concern that fees be consistent with safety and soundness. Two banks each separately provided the OCC with information about how they had established the fees they charged to non-customers who use the bank's ATMs. In each case, the OCC concluded that the bank had satisfied the requirements of §7.4002 and was, therefore, authorized by federal law to impose the fees at issue.

Other Projects

Community Bank-Focused Regulation Review

LRA participated in the community bank initiative announced by the Comptroller in 1999 by preparing an advance notice

of proposed rulemaking (ANPR) initiating a community bank-focused regulation review. The purpose of this review is was to identify changes to the OCC's regulations that would be especially useful for community banks. Toward that end, the ANPR identified and solicited comments on regulations in four specific areas—capital requirements, corporate activities and transactions, corporate governance, and lending limits. It also asked for other suggestions for modifying or streamlining our regulations, for eliminating unnecessary regulatory burden eliminated, and for developing alternative, differential regulatory approaches that will achieve the OCC's goals while minimizing burden on community banks.

Insurance Complaint Sharing Agreements

As of December 15, 1999, the OCC had entered into insurance-complaint-sharing agreements with 22 state insurance departments, and agreements were pending in three more states. These agreements were drafted by LRA staff based on a model agreement drafted by the OCC and the National Association of Insurance Commissioners (NAIC) that was approved by the NAIC in June 1999. The agreements provide that the OCC will forward to the state insurance department a copy of any complaint that it receives relating to the sale of insurance in the state by a national bank. Similarly, the state insurance department will forward to the OCC a copy of any complaint it receives involving a national bank. Except to the extent that it is necessary to use the shared complaint information for legitimate regulatory or supervisory purposes, the confidentiality of all shared information will be maintained.

Litigation Division

The Litigation (LIT) division represents the OCC in court under a grant of independent litigating authority. The division also works closely with the U.S. Department of Justice and with U.S. attorneys on matters of mutual interest. Described below are some of the division's activities in 1999.

Bank Powers/Activities Litigation

During 1999, the OCC, represented by the Litigation division in the federal courts as both party and amicus, prevailed in litigation over the authority of national banks to: (a) sell insurance, pursuant to express statutory permission, notwithstanding state law to the contrary; and (b) establish ATMs, and charge convenience fees for use of those ATMs by depositors of other financial institutions, state law to the contrary notwithstanding. In addition, another federal court upheld OCC's position as exclusive administrative enforcer of banking laws—including state banking laws—with regard to national banks. The Litigation division in representing the OCC suffered two court of appeals defeats regarding bank powers: (a) a Sixth Circuit decision that a national bank's "redesignation" of its main office, followed immediately by its interstate relocation and retention of branches in the former home state, is contrary to law; (a) an 11th Circuit decision that national banks may not underwrite what is in essence an annuity. Finally, a district court decision now on appeal overturned OCC's ruling that national banks, as part of their authority to engage in the business of banking, may sell, as agent, crop insurance to their borrowers. Specifically, the Litigation division litigated the following major powers and activities cases for the OCC:

- *Independent Insurance Agents of America, Inc.,* v. *Hawke,* 43 F.Supp.2d 21 (D. D.C., 3/23/99). In this case, the district court granted summary judgment to plaintiffs, five insurance agent trade groups, in their suit challenging an OCC interpretive ruling that permitted national banks to sell crop insurance under 12 USC 24(Seventh). Relying heavily on the *expressio unius est exclusio alterius* canon of statutory construction (the expression of one thing implies the exclusion of another thing), the court ruled that Congress' grant of insurance powers in Section 92 precludes the existence of any insurance powers in Section 24(Seventh). The court also relied on cases decided by the Fifth and Second circuits that had reached the same conclusion. The OCC has appealed the district court decision and the case is scheduled for oral argument in January 2000.

- *First Union National Bank* v. *Burke,* 48 F.Supp.2d 132 (D. Conn., 4/7/99). Holding that the exclusive visitorial powers in 12 USC 484 grants the OCC exclusive jurisdiction to bring administrative enforcement actions against national banks for violations of state or federal law, this federal district court granted OCC's motion for a preliminary injunction prohibiting the Connecticut banking commissioner from continuing an enforcement action against three national banks. The commissioner had brought the enforcement action as part of a long-running dispute over whether state law prohibited national banks from charging ATM convenience fees to customers who did not have an account with the ATM owner. The court rejected the commissioner's arguments that the court lacked jurisdiction over the OCC's claim, that Section 484 did not displace state authority to enforce its own laws, that the Electronic Funds Transfer Act granted states regulatory enforcement authority over ATM fees, and that the OCC's exclusive visitorial powers violated the Tenth Amendment to the Constitution. The court concluded that, having shown that it was likely to prevail on the merits of its claim, the OCC was entitled to a preliminary injunction because it would suffer irreparable harm from the state's interference with and derogation of OCC's supervision of these federal instrumentalities.

- *McQueen* v. *Williams,* 177 F.3d 523 (6th Cir., 5/19/99). This case arose out of an OCC decision permitting a Michigan state bank to (1) convert to a national bank, (2) designate as the bank's main office a branch location more than 30 miles from the state bank's principal office, (3) become an interstate bank by relocating the new main office to Indiana while retaining existing branches in Michigan, and (4) merge an Indiana national bank into the former Michigan state bank. The OCC's decision was challenged by the Michigan banking commissioner and upheld by the district court. On appeal, the Sixth Circuit held that the designation, relocation, and merger transactions were impermissible. The court concluded that the designation of the main office was a sham and that principles of competitive equality applicable to branching prevented the national bank from relocating its main office across state lines and retaining its branches in the former main office state if a state bank could not achieve the same configuration of banking offices. The interstate issue raised by this case has been rendered moot by the Riegle–Neal Interstate Branching and Banking Efficiency Act.
- *Association of Banks in Insurance et al.* v. *Duryee,* 55 F. Supp. 2d 799 (S.D. Ohio, 6/18/99). The U.S. District Court for the Southern District of Ohio issued a decision granting plaintiffs injunctive and declaratory relief from Ohio insurance laws that prohibit or significantly interfere with national banks' exercise of their Section 92 powers. Since the complaint was filed, defendants conceded that one of the Ohio statutes at issue, which contains a total ban on national banks acting as agent for a title insurance company, is preempted by Section 92. Other statutes impose corporate and organization requirements that significantly interfere with a national bank's exercise of the authority to sell life insurance as agent. Finally, Ohio's statutory "principal purpose test" prohibits national banks from acting as insurance agents when their principal purpose in so doing is to sell insurance to their own customers. Defendant-intervenors, a group of insurance agency associations, filed an appeal with the U.S. Court of Appeals for the Sixth Circuit. The OCC filed *amicus* briefs with both the district court and the Sixth Circuit. Recently, we notified the Sixth Circuit that the President signed into law the Gramm–Leach–Bliley Act. Section 104 of the act addresses the very issue before the court, the legal standards for preemption of state insurance law by 12 USC 92.
- *Valley National Bank* v. *LaVecchia,* 59 F.Supp.2d 432 (D. N.J. 1999). Valley National Bank acquired a title insurance agency to sell insurance under 12 USC 92 and initiated this action when the state denied its application for an insurance producer's license citing a state law that prohibits banks from selling title insurance. In the suit, Valley requested a declaration that the state law was preempted by Section 92 and an injunction against the state's enforcement of the state law against the bank. In granting the relief requested, the court rejected the state's arguments that federal preemption of a state law could not be the basis for subject matter jurisdiction in a federal district court, and that Section 92 did not authorize national banks to sell title insurance because it was not among the types of insurance specifically listed in that statute. Relying on the OCC's brief as *amicus curiae*, the court concluded that the plain language of Section 92, which allows national banks to act as agent for "any fire, life, or other insurance company," authorized the bank to sell title insurance and issued an injunction prohibiting the state from denying a license to the bank on the basis of the state law prohibition.
- *Bank One, Utah, N.A.* v. *Guttau,* 190 F.3d 844 (8th Cir., 9/2/99). Iowa regulates all ATMs, no matter how owned, under a tight regime that treats them as public utilities. All ATMs must be registered with the state and all bank branding or other advertising on the face of the ATMs is prohibited. All ATMs in Iowa must connect to a single Iowa-approved network switch. After 1996 legislation removed national bank ATMs from the scope of state location restrictions, a national bank introduced its ATMs into Iowa without state registration. The state responded by levying fines against the landlord of the ATMs, which caused the landlord to shut down the ATMs. Bank One filed suit to enjoin the restrictions on preemption, commerce clause, and first amendment grounds. The district court denied the injunction, finding the restrictions innocuous. Bank One appealed several of the issues to the Eighth Circuit, which reversed the district court and ordered a permanent injunction entered against the state registration and advertising requirements on preemption grounds. The OCC filed briefs in the district and appeals courts in support of the preemption argument.
- *Blackfeet National Bank, et al.* v. *Nelson,* 171 F. 3d 1237 (11th Cir., 4/5/99). Affirming the court below, a panel of the U.S. Court of Appeals for the Eleventh Circuit held that, per the McCarran–Ferguson Act, Florida law prohibiting national banks from selling insurance out of places exceeding 5,000 in population prohibits Blackfeet National Bank from offering retirement certificates of deposit (CDs) to their customers. Going further than the court below, the 11th Circuit panel also held that the sale of retirement CDs is not an authorized banking activity because it constitutes the underwriting, not the brokerage, of annuities. The court below, as well as the Seventh Circuit in an earlier case challenging the activity, *American Deposit Corp.* v. *Schatt,* assumed that it was an activity authorized under 12 USC 24(Seventh). The 11th Circuit panel, however, said that the OCC's "no objection" letter approving the activity was based on an unreasonably broad reading of the National Bank Act. The bank filed a petition for certiorari, which the U.S. Supreme Court denied on November 19, 1999.

- *Bank of America, N.A., et al.,* v. *San Francisco, et al.* No. C 99 4817 (N.D. Cal., 11/15/99). The City of Santa Monica, by city council action, and the City of San Francisco, by referendum, adopted materially identical ordinances that would ban any financial institution from "surcharging" ATM users who are not bank account holders, enforced by "private attorney general" liability provisions. The ordinances did not affect charging by ATM owners other than financial institutions. Two national banks, Bank of America and Wells Fargo, together with the California Bankers Association, filed a complaint seeking injunctive relief against the cities. The next day, the OCC filed a brief *amicus curiae* in support of the national bank plaintiffs, arguing that the ordinances were preempted by the power to charge fees granted by the National Bank Act. After a hearing, the district court read from the bench a decision in favor of the banks, reserving the final form of the injunction until further briefing. The court extended the scope of its decision to all financial institutions, on the ground that they could not be severed from the ordinances. On November 24, 1999, the court issued an order forbidding San Francisco from making its ordinance effective, and forbidding Santa Monica from "deputizing" its citizens to enforce an invalid ordinance through private suits.

Enforcement and Related Litigation

- *American Commerce National Bank and Garners* v. *OCC, FDIC,* 1999 U.S. App. LEXIS 6704 (9th Cir., 2/22/99) (unpublished). A unanimous panel of the U.S. Court of Appeals for the Ninth Circuit, affirming the court below, granted summary judgment in favor of the OCC and three current or former OCC employees. Appellants argued, unsuccessfully, that the OCC's decision to place the bank in receivership was arbitrary and capricious and was based on anti-Semitic animus against the former CEO. Noting that the OCC's administrative record exceeded 6,000 pages and contained hundreds of pages prepared by the bank, the Ninth Circuit held that the district court did not abuse its discretion in confining its scope of review to the administrative record. Then the court held that substantial evidence supported the OCC's decision, and that the OCC's determination that several statutory grounds existed for placing the bank into receivership was not arbitrary or capricious. As for the claims against the three OCC officials, the court dismissed them because the record contained no evidence of misconduct on their part, nor could appellants show that the OCC would not have closed the bank but for the officials' alleged misconduct. Appellants filed a petition for certiorari, which the Supreme Court denied on October 4, 1999.
- *Towes* v. *U.S. Dep't. of the Treasury, OCC, and Board of Governors,* 168 F.3d 502 (9th Cir., 2/23/99) (unpublished). The OCC imposed penalties of $10,000 and $25,000, respectively, against a father and son who were the CEO and chairman of the board of a small Montana national bank. After a hearing, those penalties had been recommended by the presiding administrative law judge, who found that the individuals had engaged in numerous instances of self-dealing constituting unsafe and unsound banking practices. On the same record, the Federal Reserve Board prohibited them from banking. The two cases were consolidated for argument and decision. The Ninth Circuit, in an unpublished decision, found that substantial evidence supported the orders, and rejected the Towes' procedural, evidentiary, and bias arguments.
- *Banking Consultants of America* v. *USA,* Case No. 98–5354 (Sixth Circuit 11/10/99). The U.S. District Court for the Western District of Tennessee granted the motion of the OCC and Federal Reserve Board to dismiss plaintiffs' action seeking to enjoin an ongoing investigation by the two agencies. The court held that it lacks jurisdiction to interfere with such investigations. Plaintiffs appealed to the Sixth Circuit, which later dismissed the appeal at appellants' request.

Administrative Enforcement Decisions

During 1999, the division drafted two Comptroller decisions, both on requests for interlocutory review of issues in a debarment proceeding.

Requests for OCC Information and Related Litigation

In 1999, the Litigation division continued to protect the confidentiality of its examination reports and other nonpublic material. For example, the division:

- Filed complaint in intervention in *Frick* v. *Austin Bank, N.A.,* and subsequently obtained a favorable decision directing bank's opponent to file a request under Part 4 for the SAR and other confidential material. The division then processed the administrative request and prepared a decision for the senior deputy comptroller.
- After intervening in U.S. Bankruptcy Court in Vermont to oppose a motion to compel Randolph National Bank to produce OCC documents, the division obtained a favorable order directing the plaintiff to exhaust her administrative remedies by filing a Part 4 request with OCC.
- Completed several years of issuing decisions on requests by the parties in long-running litigation by former Hibernia National Bank executives over their employment contracts. Included in this effort was a letter to the court detailing the legal framework and the division's efforts to assist. These document requests were among the many processed by the division during the year.

- Obtained a favorable decision quashing a federal court subpoena for the testimony of a former NBE in *Golden Pacific Bancorp* v. *FDIC*. The court's decision endorsed the exhaustion doctrine.

Personnel/Administrative Litigation

During 1999, the only two OCC cases to go to judgment in federal court resulted in victories for the agency:

- *Acree* v. *Department of the Treasury,* Case No. 99–3016 (Fed. Cir., 8/09/99). In this case, the U.S. Court of Appeals for the Federal Circuit affirmed (per curiam) the decision by the Merit Systems Protection Board (MSPB) to sustain the OCC's removal of one of its employees. The OCC removed the employee in 1992 based upon its findings, as well as those of the Securities and Exchange Commission, that the employee made options trades based on non-public inside information he obtained at the OCC about several national banks supervised by his unit. At the employee's request, the MSPB put his appeal on hold for several years pending investigation of the trades by two U.S. attorneys.
- *Koskinen* v. *Rubin,* Case No. 1:97CV02337RCL. (D.D.C., 3/30/99) The U.S. District Court for the District of Columbia issued an order dismissing with prejudice plaintiff's complaint in this case alleging disability discrimination and retaliation by the OCC. The memorandum opinion explained that the Rehabilitation Act of 1973 does not provide an employee with a right to be given a different position merely because a supervisor's criticism of her work causes stress.
- The division also represented OCC's interests in litigation brought by the United States against Blue Cross and Blue Shield, which brought the agency a recovery in the neighborhood of $700,000.

Legal Advice

On a daily basis, the Litigation division gives advice within and outside the OCC on a wide range of subjects including corporate applications, interpretive letters, and memoranda prepared by other units in the law department, section 914 applications, part 4 issues, year-2000 issues, personnel issues, employee garnishments, civil procedure, and indemnification questions.

Securities and Corporate Practices Division

The Securities and Corporate Practices (SCP) division provides legal counsel to the OCC and advises the public on federal banking and securities laws related to bank powers, securities activities, annuities and insurance, bank derivative activities, bank fiduciary matters, bank corporate activities, and bank investments.

In 1999, SCP prepared or participated in the issuance of several significant opinions and interpretations. These opinions are summarized below:

Authority of Bank Subsidiary to Underwrite Corporate Bonds

SCP prepared a decision that conditionally approved an application by a national bank permitting its operating subsidiary to engage in various securities activities including underwriting and dealing in corporate bonds, dealing in and privately placing trust preferred securities, and buying and selling collateralized mortgage obligations. The decision represents an extension of the reasoning from the similar "Revenue Bond Decisions" (Conditional Approval No. 262 (December 11, 1997) (Zions Decision); Corporate Decision No. 98–48 (October 20, 1998) (Commerce Decision); Conditional Approval No. 297 (December 9, 1998) (UMB Decision); Conditional Approval No. 309 (April 12, 1999) (First Tennessee Decision)).

In the decision, the OCC allowed the operating subsidiary to engage in activities other than those permitted for a parent national bank under 12 CFR part 5, as revised in 1996. The OCC approved the proposed activities as permissible under both section 24(Seventh) of the National Bank Act and section 20 of the Glass–Steagall Act. Pursuant to the Gramm–Leach–Bliley Act, as of March 11, 2000, the proposed activities would be permissible for financial subsidiaries of national banks as well.

Authority of Bank Subsidiary to Underwrite Equity Securities

SCP received an application from a national bank in Tennessee to expand the activities of its operating subsidiary to underwrite and deal in, to a limited extent, all types of debt and equity securities (other than ownership interests in open-end investment companies). The OCC published notice and request for comments on the application in 64 *Federal Register* 69071 (December 9, 1999) and has not issued its final decision on this application. The bank's proposal would be permissible as of March 11, 1999 under the standards of the recently enacted Gramm–Leach–Bliley Act.

Insurance Activities

SCP provided the legal analysis for several precedential opinions and approvals in the insurance area in 1999. In several letters, the OCC concluded that a national bank insurance agency established under 12 USC 92 and licensed under Illinois, Michigan, or New York law may establish satellite offices outside of the "place of 5,000" and

engage in insurance sales activities at those locations. The letters relied on the "First Union letter" (OCC Interpretive Letter No. 753 (November 4, 1996)) and the "Louisiana letter" (OCC Interpretive Letter No. 844 (October 20, 1998)), which found that these national bank insurance agencies may use the same methods and facilities available to licensed insurance agencies generally. When state law permits insurance agencies to operate from more than one location, a national bank insurance agency also may establish satellite locations of the agency outside of the "place of 5,000" to engage in insurance sales.

SCP prepared several opinions involving mortgage reinsurance subsidiaries. In these opinions, the OCC concluded that a national bank may either establish an operating subsidiary, or expand the activities of an existing subsidiary, to reinsure a portion of the mortgage insurance on loans serviced, originated, or purchased by the bank or the bank's subsidiaries or depository institution affiliates. The subsidiary accepts a portion of the default risk on the mortgage loans, in exchange for a share of the insurance premiums paid. The OCC concluded that the subsidiary's activities are functionally equivalent to or a logical outgrowth of the bank's business of underwriting mortgage loans. Furthermore, the OCC concluded in these decisions that the reinsurance of serviced loans is part of the business of banking because it is functionally equivalent to purchases of a loan participation in the serviced loans. The OCC also found mortgage reinsurance on serviced loans to be permissible as incidental to banking because it is convenient and useful to the mortgage banking business.

SCP also prepared an opinion involving self-insurance. The decision allowed a national bank to establish an operating subsidiary to underwrite insurance coverages on the business risks of the parent bank and its bank affiliates, and to reinsure credit life, credit health and accident, and credit unemployment insurance sold to customers that borrow from the bank and its lending subsidiaries. The letter noted that because a bank and its bank affiliates are separately able to assume the risks arising from their banking business, and since bank affiliates may transfer these business risks to one another, consolidating these risks within a national bank subsidiary is permissible. The decision concluded that these self-insurance activities are functionally equivalent to or a logical outgrowth of the bank's authority to assume the risk of loss associated with conducting a banking business, and are part of the business of banking. The decision also concluded that the proposed activities are permissible incidental activities because they offer efficiencies that facilitate the operation of the bank as a business, promote profitability and avoid economic waste, and enhance the bank's ability to promote its products and services.

Fiduciary Activities

In the fiduciary area, SCP drafted a letter that concluded, for the first time, that a trust company may sell insurance pursuant to section 92 from a trust office located in a place with a population of 5,000 or fewer inhabitants if the trust office performs "core fiduciary functions" at its office in that "place." The OCC previously determined that a bank with multi-state offices is located for purposes of section 92a in the states where it acts in a fiduciary capacity and that a bank "acts in a fiduciary capacity" for section 92a purposes at the places at which the bank performs the core functions of a fiduciary. The letter concluded that a bank that is located in a place for purposes of providing trust services under section 92a may also be "located and doing business" in the place for purposes of section 92. The letter also concludes that the plain language of section 92 supports a finding that trust banks are located and doing business where they perform core fiduciary functions because these activities, like the core banking activities of a national bank, represent their primary lines of business.

Corporate Governance

SCP assisted in preparing several conditional approval letters and corporate decisions allowing national banks located in Iowa, California, and Michigan to amend their bylaws to elect the corporate governance provisions of their respective state's law, and to engage in a reverse stock split as provided by the same. A reverse stock split enables the bank and its holding company, among other things, to convert to Subchapter S status, to transform from a reporting company under the Securities Exchange Act of 1934 to a nonreporting company, and substantially reduces administrative expenses and simplifies corporate procedures of a bank. To avoid undermining the purposes of 12 USC 214, 215, and 215a, a reverse stock split must provide shareholders reasonable dissenters' rights to ensure that they receive a fair price for their shares. The dissenters' rights afforded in a reverse stock split need not be identical to those located in the National Bank Act, but must offer comparable protections. When dissenters' rights are not provided for or required under applicable state law, the bank must voluntarily agree to provide those rights in a comparable fashion to those under the National Bank Act, and agree to provide for binding arbitration in the event a court declines jurisdiction in any resulting appraisal action.

SCP also prepared two letters finding that national banks in Alabama and Washington may elect the corporate governance provisions of their respective state's law and complete share exchanges in accordance with those provisions. Federal law does not expressly address the authority of national banks to engage in share exchanges. There are

several mechanisms, however, by which a national bank may form a parent holding company and, as a result, own 100 percent of the shares of a bank. Both Alabama and Washington state law permit share exchanges in a manner consistent with provisions in federal banking law that permit national banks to accomplish the same result through different steps. In addition, national banks that effect a share exchange must provide reasonable dissenters' rights. Those dissenters' rights must be substantially similar, although not necessarily identical to those in section 215a of the National Bank Act. In both cases before the OCC, the bank proposing to adopt state law agreed to pay the cost of any judicial appraisal or arbitration that may result.

Enforcement Activities

SCP administers and enforces the federal securities laws affecting national banks with publicly traded securities, including the Securities Exchange Act of 1934, and the OCC's related disclosure regulations at 12 CFR part 11. The division also enforces the OCC's securities offering disclosure rules (12 CFR part 16), which govern national banks' public and private offers and sales of their securities.

The division is responsible for the OCC's enforcement program to assure national bank compliance with federal securities laws applicable to bank municipal and government securities dealers, bank transfer agents, and other bank securities activities. The division is the OCC's liaison to federal and state securities regulatory agencies, including the Securities and Exchange Commission (SEC).

In carrying out these responsibilities, as in past years, SCP reviewed securities offering disclosures, proxy materials, periodic reports, and other reports filed with the OCC under the Comptroller's securities disclosure rules and merger application procedures. The division also continued to contribute to the SEC's enforcement and disclosure review responsibilities by, for example, arranging for the SEC to review bank examination reports and work papers in SEC enforcement cases.

SCP also provides the SEC with information on national bank subsidiaries of bank holding companies filing securities disclosures with the SEC. In 1999, the division also referred potential violations of securities laws under the SEC's jurisdiction to the SEC.

District Counsel

In addition to its Washington attorneys, the law department includes a district counsel and legal staff in each of the OCC's six district offices. Each district counsel's staff consists of four to six attorneys plus support personnel. The district counsel and their attorneys serve as the OCC's front-line legal advisors, working directly with bank examiners in the field, assistant deputy comptrollers in Bank Supervision Operations, district licensing staff, and the district deputy comptrollers. They advise these clients on virtually the entire spectrum of banking law issues, frequently dealing with questions that arise during bank examinations and require prompt resolution. District attorneys also respond to telephone and written inquiries from banks, the banking bar, and the general public. They often serve with Washington attorneys on working groups on particular topics, and work jointly with Washington attorneys on complex assignments that arise in their districts. In addition, the district legal offices administer the OCC's ethics and financial disclosure requirements in their respective districts, conduct legal training programs for district bank examiners, and speak to bankers at district outreach meetings.

Some of the significant legal matters handled by the district counsel in the past year included:

- Drafting a legal opinion permitting national banks to structure loans as installment sales, enabling them to serve customers whose religious beliefs prohibit them from borrowing money and paying interest;
- Drafting legal opinions permitting national banks to make use of videoconferencing technology in their board meetings;
- Working with a state banking regulator to clarify whether that state's law would permit national banks to engage in mobile branching in that state;
- Providing legal review on a complex, interstate restructuring of a bank holding company's subsidiary banks;
- Providing guidance to retailer-owned credit card banks concerning their responsibilities for reporting criminal activity by employees of the parent retailer involving retailer "private label" credit cards issued by such banks.

Bank Organization and Structure Department

National banks must, by law and regulation, seek OCC approval for certain classes of corporate changes. These changes include new bank charters, conversions to national banks, corporate reorganizations, mergers, branches, bank relocations, operating subsidiaries, capital and subordinated debt issues, and bank acquisitions. Most licensing requests are reviewed and decided in the licensing units located in the six district offices. Complex issues are forwarded to the Bank Organization and

Structure (BOS) department in Washington, D.C., for analysis and decision by senior management. The department establishes policies and procedures for the OCC's processing of corporate applications, reviews and makes recommendations on applications that raise significant legal and policy issues, and maintains effective quality control and information systems that support decentralized licensing operations. The Bank Organization and Structure department has three divisions: District/ Large Bank Licensing, Licensing Policy and Systems, and Washington-Directed Licensing.

Application Volume and Decision Results

Table 1 summarizes corporate application activity for 1999. The total number of applications filed with the OCC decreased from 2, 628 in 1998 to 2,210 in 1999. This decline occurred primarily in number of branch and reorganization applications. The 1999 count does not include 91 operating subsidiary filings that were effected through after-the-fact notices, compared to 99 after-the-fact notices in 1998.

From 1998 to 1999 new charter applications increased by four to 79. The OCC received 55 charter applications from independent groups during 1999 (a 53 percent increase from the 26 received in 1995). Of the 55 independent charters received in 1999, 43 were for full service banks, eight for trust banks, and four for credit card banks. The other 24 charter applications received in 1999 were sponsored by existing holding companies. Of this group, 15 were for full service banks, seven for trust banks, one for a banker's bank, and one for a credit card bank.

The OCC denied five applications in 1999, compared to one in 1998. Of the 2,175 decisions, 49 were conditional approvals. Conditional approvals increased over 1998, when 48 of 2,482 decisions were conditionally approved.

Summaries of important corporate decisions for the previous quarter are published in each issue of the *Quarterly Journal*.

Processing Timeliness

One measure of our effectiveness in processing corporate applications is the percentage of applications processed within target time frames. To ensure applications are processed in a timely manner, Bank Organization and Structure measures processing time using benchmark time frames for routine applications and for more complex applications. Processing timeliness varies with the volume and complexity of applications. These, in turn, vary with economic conditions and changes in banking law. Table 2 shows the time frame performance for the applications processed by the OCC in 1998 and 1999 (without including after-the-fact notices for subsidiaries in 1998 and 1999). The OCC generally meets target time frames for all application types. Deviations from these targets are primarily the result of application complexity, the need to acquire additional information, or peak workload demands.

The OCC's regulation governing all corporate applications, 12 CFR 5, establishes an "expedited review" process for certain applications from banks that are well capitalized, have a CAMELS rating of 1 or 2, have a CRA rating of "satisfactory" or better, and are not subject to an OCC formal

Table 1—Corporate licensing activity in 1999

	Applications received		1999 District decisions			1999 Washington decisions			
	1998	1999	Approved	Conditionally approved	Denied	Approved	Conditionally approved	Denied	Total 1999 decisions
Branches	1,566	1297	1,280	2	3	19	3	0	1,307
Capital/sub debt	108	126	80	1	0	6	6	0	93
Change in control	17	11	13	0	0	0	0	0	13
Charters	75	79	58	1	0	6	4	1	70
Conversions[1]	32	16	13	1	0	3	0	0	17
Federal branches	1	0	0	0	0	0	0	0	0
Fiduciary powers	40	29	22	0	0	1	0	0	23
Mergers	107	89	81	0	0	6	1	0	88
Relocations	236	263	254	0	0	7	1	1	263
Reorganizations	307	173	160	0	0	24	0	0	184
Stock appraisals	8	7	0	0	0	10	0	0	10
Subsidiaries[2]	131	120	61	5	0	17	24	0	107
Total	2,628	2,210	2,022	10	3	99	39	2	2,175

Note: Mergers include failure transactions when the national bank is the resulting institution.

[1] Conversions are conversions to national bank charters.

[2] Subsidiaries do not include 99 after-the fact notices received in 1998 and 91 after-the-fact notices in 1999.

Source: Bank Organization and Structure, Comptroller of the Currency.

Table 2—OCC licensing actions and timeliness, 1998–1999

Application type	Target time frame in days [1]	1998			1999			Annual change		
		Number of decisions	Within target		Number of decisions	Within target		Number of decisions	Within target	
			Number	%		Number	%		Number	%
Branches	45/60	1,529	1,519	99.3%	1,307	1,290	98.7%	–222	–229	–0.6%
Capital/sub debt	30/45	76	71	93.4%	93	82	88.2%	17	11	–5.2%
Change in control	NA/60	12	12	100.0%	13	13	100.0%	1	1	0.0%
Charters[2]		66	54	81.8%	70	56	80.0%	4	2	–1.8%
Conversions	30/90	27	26	96.3%	17	16	94.1%	–10	–10	–2.2%
Federal branches & agencies	NA/120	1	1	0.0%	0	0	0.0%	–1	–1	0.0%
Fiduciary powers	30/45	31	31	100.0%	23	23	100.0%	–8	–8	0.0%
Mergers	45/60	102	96	94.1%	88	85	96.6%	–14	–11	2.5%
Relocations	45/60	219	218	99.5%	263	255	97.0%	44	37	–2.6%
Reorganizations	45/60	284	261	91.9%	184	170	92.4%	–100	–91	0.5%
Stock appraisals	NA/90	4	0	0.0%	10	1	10.0%	6	1	10.0%
Subsidiaries	30/60	131	85	64.9%	107	82	76.6%	–24	–3	11.8%
Total		2,482	2,374	95.6%	2,175	2,073	95.3%	–307	–301	–0.3%

Note: Most decisions (94 percent in both 1998 and 1998) were decided in the district offices, International Banking and Finance, and Large Bank Licensing under delegated authority. Decisions include approvals, conditional approvals, and denials.

[1] Those filings that qualify for the "expedited review" process are subject to the shorter of the time frames listed. The longer time frame is the standard benchmark for more complex applications. New time frames commenced in 1997 with the adoption of the revised Part 5. The target time frame may be extended if the OCC needs additional information to reach a decision, permits additional time for public comment, or processes a group of related filings as one transaction.

[2] For independent charter applications, the target time frame is 120 days. For holding company sponsored applications, the target time frame is 45 days for applications eligible for expedited review and 90 days for all others.

Source: Bank Organzation and Structure, Comptroller of the Currency.

enforcement action. Changes made to 12 CFR 5 shortened target time frames beginning in 1997. In addition, for some routine transactions, OCC approval is no longer required.

The time frames performance for application processing has been consistent for the last three years, after significant improvements from 1995. To provide consistent comparisons with prior years results, the statistics have been adjusted for regulatory and processing changes. In 1995, the OCC met target time frames on 88 percent of the applications it decided. In 1996, on an adjusted basis, the OCC met target time frames on 90 percent of the applications it decided. In 1997, under the revised regulation, performance continued to improve. Even with shorter time frames, the OCC met its targets approximately 96 percent of the time. In 1998 and in 1999, the OCC again met target time frames approximately 96 percent of the time.

District/Large Bank Licensing Division

The District/Large Bank Licensing (D/LBL) division oversees all district and large bank licensing operations with a goal of enhancing effective licensing operations. The division, through licensing managers in each district office and large bank licensing, has decision authority for all licensing applications not requiring decision through the Washington-Directed Licensing division in headquarters. The D/LBL division's responsibilities include monitoring actual operating performance for the six district and large bank licensing units, ensuring the effectiveness and efficiency of existing operations, and exploring new programs for improving licensing operations.

Significant developments during 1999 included the following:

- The licensing survey results for 1999 show that 99 percent of applicants responding gave the OCC excellent marks (ratings of 1 or 2) for the way their applications were processed.
- The licensing survey checks the quality of service provided to banks filing corporate applications. A survey was sent to each bank that filed a corporate application, except for large banks and a few mid-size banks which, due to application volume, were surveyed on a quarterly basis. Applicants were asked to rate the OCC's quality of service on a scale of 1 to 5, with 1 being outstanding, 3 neutral, and 5 significantly deficient.

The average rating for each of five service categories follows:

Service category	Rating
Timeliness of decision	1.26
Appropriateness of filing location/contact person	1.21
Knowledge of OCC contact	1.20
Professionalism of OCC staff	1.12
Overall rating of service	1.21

- Because timeliness is an important determinant of efficiency in licensing operations, it is one of several measures that the D/LBL division used to monitor performance. Time frame performance overall was excellent with approximately 96 percent of all licensing applications decided within established time frames. Exceptions (cases that were not decided within established time frames) were generally those with substantive legal or policy issues, such as the sale of insurance, CRA protests, interstate banking, electronic banking, year-2000 problems, or other significant, unique, or precedent-setting activities.
- The D/LBL division developed and implemented customer service standards designed to ensure that other divisions within the agency receive the highest quality of service from the district and large bank licensing units.
- The D/LBL division increased internal and external outreach efforts designed to instruct and inform bankers and their representatives and staff of bank supervision about licensing issues and processes.

Licensing Policy and Systems Division

The Licensing Policy and Systems (LP&S) division develops and implements general policies and procedures for the corporate activities of the OCC. The division also implements the OCC's licensing quality assurance program and maintains databases, such as the Corporate Activities Information System, and the Institution Database, and develops systems and reporting capabilities for the department.

LP&S achieved significant results in 1999, both in terms of policy and systems development. Significant projects during calendar 1999 included the following:

Policy

- A new *Comptroller's Corporate Manual* booklet for Internet bank charters is under development. Internet banking is a significant OCC priority.
- LP&S initiated the Charter Renovation Project in 1999. The project includes a comprehensive review of the chartering process to incorporate new ideas and lessons learned from recent *de novo* charter activity, identification of best practices to enhance our process, and clarification of several policy issues for improved guidance and consistency. During the research phase, interviews were conducted with all district deputy comptrollers and licensing staffs, Washington-Directed Licensing analysts, and certain supervisory staff in districts with heavy charter activity. External interviews were conducted with bank consultants and recent spokespersons of new banks. The research phase is almost complete, and final completion of the project is expected in the second quarter of 2000.
- LP&S continued to work closely with the FDIC in 1999 to resolve differences that arose in connection with charter and deposit insurance applications. The division's objective is to minimize differences in the two application processes and, thereby, reduce burden to the applicant by developing a joint application process.
- LP&S coordinated development and publication of *A Guide to the National Banking System,* a complement to the *Comptroller's Corporate Manual*. This booklet, which is available on the OCC's Internet site, was designed to provide an overview of the national banking system, its regulation, and the OCC.
- Under LP&S leadership, with support from D/LB, the Best Practices Working Group reviewed and issued revised procedures for processing expedited branch and business reorganization application filings. This Best Practices program was established to evaluate the risks involved, improve processing efficiency, and provide future suitability with the developing OCC computer system, Corporate View.
- LP&S distributed updated guidance on the year-2000 (Y2K) date change through Advisory Letter 99–5, "Year 2000 and Systems Integration Considerations in Corporate Application Decisions." Further, we issued guidance on establishing temporary branches in the event of a Y2K infrastructure related problem.
- LP&S issued guidance on exemptions to the external audit requirement for bank holding company (BHC) sponsored banks. The clarification states that "An exemption usually would be granted for a national bank sponsored by a BHC that conforms to the [current written policy requirement] *and* maintains adequate audit coverage at the bank level. Any exemption denied an applicant that meets these requirements should be well supported." This action will reduce the burden to banks eligible for the exemption while maintaining safe and sound practices.

- During 1999, LP&S staff field-tested the newly developed Licensing Quality Assurance (QA) program. The objective of the QA program is to ensure the OCC processes and documents all corporate decisions in accordance with national policies and applicable laws, rules, and regulations. The program is designed to promote quality throughout the application process, to identify efficient and innovative licensing practices across the districts, and to address any systemic concerns.

- LP&S provided support for and/or participated in numerous OCC outreach activities to provide information about the OCC corporate processes and obtain first-hand feedback to improve those processes.

Systems

- Significant progress was made in developing and implementing key aspects of Phase I of Corporate View (the OCC's future corporate application processing system). Progress in 1999 included developing a prototype of an extranet branch and relocation application for electronic filing; improving ease of entry and data access in the Corporate Activities Information System (CAIS); and developing a database retrieval structure and ad hoc query capabilities to improve reporting of licensing and structure information.

- During 1999, LP&S staff ensured that the CAIS system was year-2000 compliant. This included preparing and distributing contingency plans and materials in the event of a systems failure.

- Using the CAIS, LP&S provided licensing and structure information to respond to congressional inquiries, including those relating to CRA issues. Licensing and Institution Database information was also used to respond to public inquiries. Additionally, LP&S continued to provide the OCC's Communications division with licensing and structure information to respond to requests made under the Freedom of Information Act. Many of those requests involved providing information concerning branches located in specific geographic locations (e.g., by zip code or county); branches opened or closed within a specific geographical location during a specific time period; *de novo* charters within a state for a specific time period; and mergers within a certain state for a specific time period.

- LP&S contributed to enhancing OCC's overall data systems through active participation the OCC's Data Advisory Board and Data Working Group's efforts to develop data warehousing and data marts.

Washington-Directed Licensing Division

The Washington-Directed Licensing (W-DL) division coordinates the processing of corporate applications that are considered to be novel, complex, or controversial. The division provides recommendations to OCC senior management with respect to the disposition of applications not delegated to the district, large bank, or international processing units. The division also conducts bank stock appraisals upon request from shareholders dissenting to a merger or consolidation involving national banks.

The W-DL division contributes summaries of selected corporate decisions to every issue of the *Quarterly Journal.* In addition, decisions that represent new or changed policy or present issues of general interest to the public or the banking industry are published monthly in the OCC publication, *Interpretations and Actions.* In 1999, the following corporate decisions were precedent setting or otherwise represented issues of importance. The decision documents for these approvals were published in the OCC's *Interpretations and Actions*. A noteworthy development in 1999 is the increase in the number of filings the OCC received involving electronic banking and other new technologies.

Technology

The OCC granted conditional approval to each Bank of America, National Trust & Savings Association, San Francisco, California, and Citibank, National Association, New York, New York, to expand the activities of an existing operating subsidiary and thereby make minority, noncontrolling investments in a limited liability company engaging in research and development activities in preparation for the establishment of a digital identity certification service for commerce over open networks, including the Internet. These activities include such things as purchasing systems and technologies, developing marketing and branding materials and strategies, and conducting pilot tests. The decision represents another step in national banks' expansion into electronic activities, and makes the point that, since the OCC has previously found digital identity certification services to be a permissible activity for national banks, research and development leading up to that activity is also permissible. [Conditional Approval No. 301, dated January 15, 1999]

The OCC granted conditional approval, in two decisions, for banks to make noncontrolling investments, through operating subsidiaries, in limited liability companies that will (in one of the decisions) operate an electronic interbank

switch, and provide electronic billing information to support electronic bill presentment and payment services over the Internet. The companies offer electronic bill payment and presentment services through the Internet. The OCC has long held that billing and collecting services are permissible for national banks, whether done conventionally or electronically, and therefore electronic bill presentment is part of the business of banking. The OCC also has recognized that as part of an electronic collection or payments process, national banks may store and transmit information related to the underlying transactions, such as electronic data interchange. [Conditional Approval No. 304, dated March 5, 1999; and, Conditional Approval No. 332, dated October 18, 1999]

The OCC granted preliminary conditional approval to NextCard, Inc., to establish NextBank, National Association, San Francisco, California, a limited purpose credit card bank that will operate exclusively over the Internet. The proposed bank will market its NextCard Visa credit card via its own Web site and through advertising links on other sites. The card can be used for both online and offline purchases, like any other Visa card. A notable aspect of this bank's operations is that the application and approval process for its credit card will be done entirely online in real time, the first bank to offer these features. This is the OCC's first approval of an Internet credit card bank, and its second Internet bank charter approval (the first was CompuBank, National Association, Houston, Texas, in 1997). [Conditional Approval No. 312, dated May 8, 1999]

The OCC granted preliminary conditional approval for Canadian Imperial Bank of Commerce, Toronto, Ontario, to charter a new full-service national bank, CIBC National Bank, Maitland, Florida. The proposed bank will have no traditional banking offices, but instead will serve customers primarily through ATMs, a transactional Web site on the Internet, and a telephone call center with a toll-free number. A notable feature of CIBC National Bank will be its use of kiosks in supermarkets, staffed on a part-time basis by customer service representatives who will provide loan and deposit production services. All of the electronic delivery channels referred to above will be offered at the kiosks, which will operate under a tradename associated with the retail store. This is the third charter proposal filed with the OCC for a national bank that will deliver products and services primarily through electronic means (the first two were CompuBank, National Association, Houston, Texas, in 1997, and NextBank, National Association, San Francisco, California, this year). [Conditional Approval No. 313, dated July 9, 1999]

The OCC granted conditional approval for Bank One, National Association, Columbus, Ohio, to make a minority investment, through an existing operating subsidiary, in a new joint venture to provide automobile financing through the Internet. The bank's venture partner engages in the sale of cars over the Internet. Through the new company, customers may obtain one-stop shopping for both a car and its financing. [Conditional Approval No. 321, dated July 28, 1999]

The OCC granted conditional approval for PNC Bank, National Association, Pittsburgh, Pennsylvania, to expand the activities of an existing operating subsidiary to hold a 2.93 percent voting interest in a corporation. The corporation provides data processing services to financial institutions and others for the purpose of facilitating the transfer of mortgage servicing rights, mortgage ownership, and the release of mortgages through an electronic "book-entry" system to register and track mortgages. [Conditional Approval No. 333, dated October 19, 1999]

The OCC granted approval for First National Bank of Omaha, Omaha, Nebraska, to expand the activities of an existing operating subsidiary to include adding links to merchant processing-related third-party vendors on its Internet site. [Corporate Decision No. 99–35, dated October 20, 1999]

The OCC granted conditional approval for Bank of America, National Association, Charlotte, North Carolina, and Citibank, National Association, New York, New York, to expand the activities of Identrus, LLC (formerly Global Trust Organization LLC), a limited liability company in which the banks hold noncontrolling minority interests. The expanded activities will allow the company to support a multiple bank certification authority (CA) network. The central entity will act as the root CA for the sub-CA banks and will establish business rules so that customers of any sub-CAs can quickly and easily obtain verification of a certificate issued by any other CA bank in the system. [Conditional Approval No. 339, dated November 16, 1999]

The OCC granted approval for the First National Bank of Omaha, Omaha, Nebraska, to expand the activities of an existing operating subsidiary to include referring its merchant customers to a third party that would provide Web site development services for these merchants and processing purchases made over the Internet with debit and credit cards. The OCC previously approved applications for the subsidiary to engage in a variety of activities in serving small business merchants. The OCC determined that the proposed activity is a finder activity that is permissible for national banks. [Corporate Decision No. 99–50, dated December 23, 1999]

The OCC granted approval for UMB Bank, National Association, Kansas City, Missouri, to establish an operating subsidiary that will engage in research and development

activities in connection with the proposed transfer and expansion of the bank's current Internet Web site. The Web site currently operates as a large scale e-trading community specializing in comprehensive business-to-business financial and procurement transactions (in which the subsidiary would act as a finder) as well as related management products. The OCC previously determined that the provision of Internet services and related order and payment processing services are authorized for national banks. In approving this application, the OCC determined that integral to its approval of permissible activities is the approval of research and development necessary to engage in those activities. [Corporate Decision No. 99–51, dated December 23, 1999]

Insurance Activities

The OCC granted approval for Old National Bank in Evansville, Indiana, to establish an operating subsidiary to underwrite insurance coverages on a broad range of business risks of the parent bank and its bank affiliates, and to reinsure credit life, credit health and accident, and credit unemployment insurance sold to customers that borrow from the bank and its lending subsidiaries. The approval letter noted that because a bank and its bank affiliates are separately able to assume the risks arising from their banking business, and bank affiliates may transfer these business risks to one another, consolidating these risks within a national bank subsidiary is permissible. The decision concluded that these self-insurance activities are functionally equivalent to, or a logical outgrowth of, the bank's authority to assume the risk of loss associated with conducting a banking business, and are part of the business of banking. The decision also concluded that the proposed activities are permissible incidental activities because they offer efficiencies that facilitate the operation of the bank as a business, promote profitability and avoid economic waste, and enhance the bank's ability to promote its products and services. [Corporate Decision No. 99–03, dated December 21, 1998]

The OCC granted conditional approval for an existing insurance agency subsidiary of Union Planters Bank, National Association, Memphis, Tennessee, to acquire a 22 percent interest in a company that provides marketing and consulting services to insurance agencies. [Conditional Approval No. 302, dated January 21, 1999]

The OCC granted approval for Huntington National Bank, Columbus, Ohio, to expand the activities of an existing operating subsidiary to provide real estate closing and escrow activities, in addition to its existing title insurance agency activities. The subsidiary will provide these services to the bank, other lenders, and on an occasional basis to other customers where no loan or title policy is present. The approval concludes that these activities are permissible and that the subsidiary may use the excess capacity doctrine to provide real estate closing and escrow services for customers even when no loan or title policy is present. [Corporate Decision No. 99–06, dated January 29, 1999]

The OCC granted conditional approval for Huntington National Bank, Columbus, Ohio, through an existing insurance subsidiary, to acquire and hold a 49 percent noncontrolling interest in a title agency, a limited liability company and a joint venture. The title agency would offer both lending and owner title insurance policies as agent, in connection with residential and commercial mortgage loans made by the bank, its affiliates, and by third parties and also in cases where no loan is involved. Further, the agency would provide closing and escrow services and commercial and residential title abstracting services in connection with loans made by the bank, other lenders, and occasionally in cases where no loan is involved. [Conditional Approval No. 308, dated April 8, 1999]

The OCC granted conditional approval for National Bank of Commerce of Mississippi, Starkville, Mississippi, to establish an operating subsidiary for the purpose of conducting general insurance activities. After acquiring two existing insurance agencies, the bank indicated it would transfer those agencies into the subsidiary and operate it consistent with 12 USC 92. Since the location of the principal offices of the existing insurance agencies were in places of over 5,000 people, the approval was conditioned upon the bank bringing the operating subsidiary into compliance within two years of the acquisition of the agencies, or establish their legal permissibility. [Conditional Approval No. 320, dated July 28, 1999]

The OCC granted conditional approval for First Union National Bank, Charlotte, North Carolina, to expand the activities of an existing operating subsidiary to include holding a minority investment in a company that will engage in title insurance agency, real estate appraisal, loan closing, and other real estate loan-related and finder activities. Prior to the approval, the subsidiary was a licensed insurance agency authorized to act as a general insurance agent operating from a place of less than 5,000. [Conditional Approval No. 322, dated July 30, 1999]

The OCC granted approval, in four decisions, for the applicant banks to either establish an operating subsidiary, or expand the activities of an existing subsidiary, to reinsure a portion of the mortgage insurance on loans serviced, originated, or purchased by the bank, or the bank's subsidiaries or depository institution affiliates. In each case, the subsidiary will accept a portion of the default risk on

the mortgage loans, in exchange for a share of the insurance premiums paid. The OCC concluded that such a subsidiary's activities would be functionally equivalent to, or a logical outgrowth of, the banks' business of underwriting mortgage loans or purchasing loan participations. The OCC also found the activities to be permissible as incidental to banking because they are convenient and useful to the mortgage banking business. [Corporate Decision No. 99–26, dated September 2, 1999; Corporate Decision No. 99–32, dated September 20, 1999; Corporate Decision No. 99–36, dated October 29, 1999; and, Corporate Decision No. 99–37, dated October 29, 1999]

The OCC granted approval for National Penn Bank, Boyertown, Pennsylvania, to expand the activities of an existing subsidiary that holds a 70 percent noncontrolling interest in a limited partnership that sells title insurance as agent (Conditional Approval No. 275, dated April 22, 1998). Under the approval, the company's activities are expanded to include long-term care, property, and casualty coverage. [Corporate Decision No. 99–44, dated September 10, 1999]

The OCC granted approval for The Broadway National Bank, Chelsea, Massachusetts, to acquire Ellsmere Insurance Agency, Inc. as an operating subsidiary. The subsidiary will act as a finder and refer loan customers of an affiliated finance company to a third-party insurance company for casualty insurance on manufactured homes, boats, or recreational vehicles. The subsidiary will not act as agent for other insurance companies, and its compensation will be based upon a percentage of insurance premiums, which is permissible for national bank finders. [Corporate Decision No. 99–38, dated October 29, 1999]

The OCC granted conditional approval for Citibank, National Association, New York, New York, to expand the activities of an existing operating subsidiary to act as agent in selling certain credit-related insurance products. The request arose as a result of the subsidiary's purchase of a company primarily involved in making, purchasing, selling, servicing, or warehousing residential mortgage loans or other extensions of credit, or interests therein, for its own account or for the accounts of others. The company's activities also include acting as agent in selling various types of credit-related insurance products, including force placed hazard and flood insurance, in connection with mortgages it or its affiliates originate or purchase, and with mortgages it services for nonaffiliated third parties. [Conditional Approval No. 334, dated October 30, 1999]

Securities Activities

The OCC granted conditional approval for First Tennessee, National Association, Memphis, Tennessee, to establish an operating subsidiary to underwrite and deal in municipal revenue bonds, under authority of 12 CFR 5.34(f). The conditions were consistent with the OCC's prior decisions in 1997 and 1998 for three other national banks to engage in this same activity. [Conditional Approval No. 309, dated April 12, 1999]

The OCC granted conditional approval, for the first time, for National Bank of Commerce, Memphis, Tennessee, to expand the activities of an existing operating subsidiary to include various securities activities including underwriting and dealing in corporate bonds, dealing in and privately placing trust preferred securities, and buying and selling collateralized mortgage obligations under authority of 12 CFR 5.34(f). The OCC has previously approved the underwriting and dealing in, to a limited extent, municipal revenue bonds. The OCC notes that the bank's proposed activities would be permissible under the standards of the then-pending Gramm–Leach–Bliley Act. The conditions of approval are similar to those imposed in OCC's decision in 1997 approving the application by a national bank for a subsidiary to underwrite and deal in municipal revenue bonds (Conditional Approval No. 262, December 11, 1997). [Conditional Approval No. 331, dated November 3, 1999]

Expanded Activities

The OCC granted conditional approval for Hibernia National Bank, New Orleans, Louisiana, to establish an operating subsidiary to acquire noncontrolling ownership interests in two different limited liability companies. The LLCs will invest in two different limited partnerships. One of the limited partnerships will make loans to and qualifying investments in small- and medium-sized businesses. The other partnership will invest in a small business investment company (SBIC) which, in turn, will make loans and invest in securities permissible under the SBIC Act. A notable aspect of this proposal is that under the LLC operating agreements, if more than 50 percent of the membership interests are transferred in a single year, all other members must agree to any share transfers. This provision could possibly make it difficult for the bank to divest of its ownership stake if necessary or it desires. The bank will monitor the activities and transfers of LLC interests to make certain that the provision will not prevent it from withdrawing from the LLC. [Conditional Approval No. 305, dated March 15, 1999]

The OCC granted conditional approval for Wells Fargo Bank, National Association, San Francisco, California, to expand the activities of an existing operating subsidiary to include holding a minority investment in a corporation that sells and leases check-cashing machines to third parties. [Conditional Approval No. 307, dated March 19, 1999]

The OCC granted approval for National Bank of Commerce, Memphis, Tennessee, to establish a wholly owned operating subsidiary to hold a leasehold interest in several historic structures and to receive rehabilitation tax credits under IRC 47. The tax credits, which could not be utilized by a bank customer that is rehabilitating the historic structures, will be used to reduce the customer's borrowing costs on the rehabilitation financing provided by the bank. This decision follows past decisions where the OCC determined that a national bank or its operating subsidiary may hold legal title to property, as a technical matter, when doing so is an integral part of a secured financing arrangement with its customer. [Corporate Decision No. 99–07, dated March 26, 1999]

The OCC granted conditional approval for Mellon Bank, National Association, Pittsburgh, Pennsylvania, to expand the activities of an existing operating subsidiary to include holding a minority investment in a company that will engage in personal property leasing. The remaining ownership of the company will be provided by four minority-owned banks, each taking a 15 percent interest. The company will be structured so as to qualify as a Minority Business Enterprise certified by the Michigan Minority Business Development Council. [Conditional Approval No. 316, dated June 30, 1999]

The OCC granted conditional approval for First Tennessee, National Association, Memphis, Tennessee, to establish two operating subsidiaries to hold a 50 percent, noncontrolling interest in a limited partnership. The limited partnership engages in real estate tax reporting and management services in connection with certain loans made by the bank or its lending affiliates. The decision finds the activities to be either expressly authorized or considered to be part of or incidental to the business of banking. [Conditional Approval No. 317, dated July 19, 1999]

The OCC granted conditional approval for Michigan National Bank, Farmington Hills, Michigan, through an existing operating subsidiary, to acquire warrants for common stock of CheckFree Holdings Corp. Currently, Integrion L.L.C. holds these warrants. The bank and certain other large banking organizations hold, through operating subsidiaries, noncontrolling ownership interests in Integrion. As part of the bank's divestiture of its ownership stake in Integrion, it is entitled to receive a pro rata share of Integrion's CheckFree warrants. The bank applied for permission to hold, through a wholly owned operating subsidiary, the resulting noncontrolling ownership stake in CheckFree pending the bank's ultimate disposition of the stock. The OCC did not previously grant this activity to the bank as part of the Integrion–CheckFree decision (*see* OCC Conditional Approval No. 289 (October 2, 1998)). [Conditional Approval No. 319, dated July 26, 1999]

The OCC granted conditional approval for The First National Bank of Chicago, Chicago, Illinois, and Mercantile Bank, National Association, St. Louis, Missouri, to each establish an operating subsidiary to assume the noncontrolling investments in Anexsys, L.L.C. that the banks currently hold directly. The banks each have a 50 percent investment in Anexsys. The LLC's activities are comprised of cash management, electronic payment, information reporting, and data processing services. Through the restructuring, Anexsys proposes to engage in additional opportunities by providing such services for state and federal governments. [Conditional Approval No. 324, dated August 17, 1999]

The OCC granted conditional approval for First Tennessee Bank, National Association, Memphis, Tennessee, to expand the activities of its operating subsidiaries to hold a minority interest in a limited partnership to provide credit reporting services to the bank, its subsidiaries, affiliates, and eventually to nonaffiliated creditors. The activity described is either expressly authorized or considered to be part of or incidental to the business of banking. [Conditional Approval No. 336, dated November 2, 1999]

The OCC granted conditional approval for Wells Fargo Bank, National Association, San Francisco, California, to acquire from its parent company a mortgage company and its subsidiaries as operating subsidiaries. The transaction will be in the form of a contribution of the common stock of the mortgage company to the bank. The mortgage company also participates with other parties in a number of joint ventures that are engaged solely in mortgage banking activities. [Conditional Approval No. 338, dated November 10, 1999]

The OCC granted approval for Fleet National Bank, Providence, Rhode Island, to expand the activities of an existing operating subsidiary to include the provision of employee relocation benefits consulting to small- and medium-sized business customers of the bank. The subsidiary's activities previously included originating residential mortgage loans and providing relocation counseling for employees of the bank and its affiliates. [Corporate Decision No. 99–43, dated November 29, 1999]

Interstate Operations

The OCC granted approval to merge five national banks, three state banks, and one federal savings bank in Illinois and Wisconsin into one national bank in Illinois and to engage in certain related transactions, including the elimination of an intermediate holding company, the retention of main offices, branches, and subsidiaries, and the relocation of the main office. [Corporate Decision No. 99–28, dated September 13, 1999]

The OCC granted approval for a series of applications during 1999 that consolidated NationsBank Corporation and BankAmerica Corporation banking operations under one charter that operates branches in 23 states. In February, the OCC approved applications from Bank of America National Trust and Savings Association (BANTSA), San Francisco, California, and NationsBank, National Association, Charlotte, North Carolina that resulted in BANTSA's branches in New Mexico becoming branches of NationsBank. In May, the OCC approved an application the merged BANTSA and NationsBank. In October, the OCC approved an application the convert an affiliated thrift and merge it into BANTSA. [CRA Decision No. 89, dated February 19, 1999; CRA Decision No. 94, dated May 20, 1999; and Corporate Decision No. 99–34, dated October 1, 1999]

The OCC granted approval for Platte Valley National Bank, Scottsbluff, Nebraska, to acquire certain assets and liabilities of its affiliate national bank in Morrill, Nebraska, and also to establish a branch in Morrill. The decision also approves a proposal by the affiliate bank in Morrill to relocate its main office to Torrington, Wyoming. After the reorganization and relocation, one bank will be located in Nebraska and the other bank will be located in Wyoming, with neither bank having branches in the other state. [Corporate Decision No. 99–40, dated November 9, 1999]

Bank Charters

The OCC granted approval for Local Financial Corporation to convert its Oklahoma federal savings bank to a national bank, and for the resulting national bank to retain and operate as branches the branches of the federal savings bank. Under the approval, the holding company first would charter a Local Oklahoma Bank, National Association, Oklahoma City, and then merge the savings bank into the new bank. Oklahoma law permits a national bank to acquire a federal savings bank through merger and retain all of the branches of the target as long as the target satisfies the state's age requirement, which was met in this case. [Corporate Decision No. 99–11, dated April 29, 1999]

The OCC granted preliminary approval for Popular Inc., an existing bank holding company, to establish a national bank in Orlando, Florida, with the title of Banco Popular, National Association. In addition, the decision authorizes the new bank to purchase certain assets and assume certain liabilities of an affiliate's branch in Culebra, Puerto Rico. The applicant also filed with the Federal Reserve Board to establish a branch in Culebra and for the bank to acquire, as an Agreement Corporation, an insurance agency in Culebra to conduct 12 USC 92 insurance agency activities. [Corporate Decision No. 99–22, dated July 30, 1999]

The OCC granted preliminary conditional approval to establish Baytree National Bank and Trust Company, Chicago, Illinois, a full-service community bank that will offer its products and services solely via direct mail, e-mail, a telephone call center, and ATMs, but not the Internet. The approval is conditioned upon the bank providing the OCC with at least 30 days notice prior to any significant deviations or changes from its proposed operating plan during the first three years of operation. [Conditional Approval No. 346, dated December 28, 1999]

Transaction Involving a Thrift Institution

The OCC granted approval for LaSalle Bank, F.S.B., a $14 billion federal savings bank, to merge with and into its affiliate LaSalle Bank National Association. Both banks have their main offices in Chicago, Illinois, and branch offices located solely in Illinois. The OCC determined the merger to be legally authorized under 12 USC 215c, 1467a(s), 1828(c)(2) and 1815(d)(3). [Corporate Decision No. 99–46, dated December 2, 1999]

Change in Bank Control

The OCC posed no objection to a notice of change in bank control filed on behalf of a large Japanese electronic commerce holding company to acquire control of CompuBank, National Association, an Internet national bank in Texas. The OCC's no-objection relied on passivity commitments that the Japanese company entered into with the Federal Reserve to rebut the presumption of control under that Bank Holding Company Act. [Corporate Decision No. 99–47, dated December 7, 1999]

Branching

The OCC granted approval for the First National Bank, Pierre, South Dakota to establish a mobile branch that will perform various banking services at two specified locations. The approval notes that, if the bank desires to operate the branch at additional locations, it must file a new branch application and publish notice indicating that the application will extend the previous branch approval to the specific additional locations. [Corporate Decision No. 99–16, dated July 1, 1999]

The OCC granted approval, for the first time since the expiration of state limitations on *de novo* branching by state savings and loan associations, for eight national banks to establish branches in various locations in Oklahoma. The decision is based on the Deposit Guaranty principle (named after the bank that was the subject of the test case). That principle provides that national banks are entitled to the same branching rights as state-chartered thrift institutions, if such

institutions are authorized under state law to carry on banking business and are actually doing so. The OCC found that the state-chartered thrifts satisfy the Deposit Guaranty tests and have statewide branching authority under state law. [Corporate Decision Nos. 99–20 and 99–25, dated July 28, 1999 and September 2, 1999, respectively]

The OCC granted approval for First Bethany Bank and Trust Company, National Association, Oklahoma City, Oklahoma, to establish a mobile branch to service six sites in Oklahoma. This decision updates the OCC's mobile branch analysis and approves, for the first time, the use of a mobile branch based on the Deposit Guaranty principle (see Corporate Decision Nos. 99–20 and 99–25). The decision also addresses the relevance of an unusual state statutory provision relating to the use of mobile facilities, and indicates that a mobile facility may be used in compliance with state numerical limitations on branching. [Corporate Decision No. 99–41, dated November 19, 1999]

The OCC granted approval for First National Bank of Sharp County, Ash Flats, Arkansas, to establish a messenger service branch that will operate in three counties, all located in Arkansas. The approval notes that, if the bank desires to operate the branch outside of the area where notice was published, it must file a new branch application. [Corporate Decision No. 99–45, dated November 4, 1999]

Reverse Stock Splits

The OCC granted approval for six national banks to engage in reverse stock splits as authorized under state laws adopted in the banks' bylaws, provided the banks have a legitimate business purpose for the transaction and adequate dissenters' rights are provided. The banks are located in Iowa, California, Michigan, Arkansas, and Kansas. The approval letters note that the proposed reverse stock splits enable the banks and their holding companies (as appropriate), among other things, to convert to Subchapter S status, to transform from a reporting company under the Securities and Exchange Act of 1934 to a nonreporting company, to reduce substantially administrative expenses, and to simplify corporate procedures. The dissenters' rights afforded in a reverse stock split need not be identical to those located in the National Bank Act, but must offer comparable protections. When dissenters' rights are not provided for or required under applicable state law, the banks must voluntarily agree to provide those rights in a comparable fashion to those under the National Bank Act, and agree to provide for binding arbitration in the event a court declines jurisdiction in any resulting appraisal action. [Corporate Decision No. 99–10, dated April 1, 1999; Conditional Approval No. 323, dated August 10, 1999; Conditional Approval No. 329, dated September 21, 1999; Conditional Approval No. 335, dated November 2, 1999; Conditional Approval No. 344, dated December 16, 1999; and Conditional Approval No. 342, dated December 3, 1999]

Community Reinvestment Act Decisions

In January 1997, in connection with the implementation of the revised Part 5, OCC released new procedures for handling Community Reinvestment Act (CRA) issues in applications, including how adverse comments from the public would be handled. Those procedures provide, for example, that applications will be removed from the new expedited review procedures when adverse comments are received so that the applications are not approved merely through the passage of time. They also provide that prior to acting on a CRA-covered application, OCC will investigate issues raised, and, if appropriate, will use examiners independent of the most recent examination of the bank. Further, they provide that the OCC will describe the adverse comments and the results of the OCC investigation in public decision documents on the applications.

The procedures provide the option of OCC meetings with commenters to assure that OCC understands their concerns, and provide that OCC will accept comments at any time, even after the close of public comment periods, if to do so will not unnecessarily delay action on the application. OCC followed these policies on all CRA-covered applications received during 1999.

During 1999, the OCC received adverse comments from the public on six applications. Four of those applications each received one comment. The other two applications received comments from between roughly one to two dozen individuals, community organizations, or elected officials. In one instance the OCC conducted a private meeting with nearly 30 attendees to hear both positive and negative comments.

In all cases that initially qualified for expedited review, the OCC removed them from the expedited review procedures. The agency investigated and responded publicly to the issues raised in each case. The OCC also reviewed and addressed publicly CRA issues raised in other applications. The decisions on applications presenting CRA issues, listed in Table 3, were published in the OCC's monthly *Interpretations and Actions* and are also available on the OCC's Web site. Significant decisions with CRA issues are summarized in Table 3.

Table 3—List of 1999 decisions presenting Community Reinvestment Act issues

Bank, city, state	*Interpretations and Actions* Date	Document number
U.S. Bank National Association, Minneapolis, MN	Dec.1999	CRA Decision No. 102
Net First National Bank, Boca Raton, FL	Dec.1999	Conditional Approval No. 337
U.S. Bank National Association, Minneapolis, MN	Nov.1999	CRA Decision No. 101
Inwood National Bank, Dallas, TX	Nov.1999	CRA Decision No. 100
United National Bank, Monterey Park, CA	Oct. 1999	CRA Decision No. 99
Marquette National Bank, Chicago, IL	Sep. 1999	CRA Decision No. 98
United National Bank, Monterey Park, CA	Sep. 1999	CRA Decision No. 97
Firstar Bank, National Association, Cincinnati, OH	Sep. 1999	Corporate Decision No. 99–31
U.S. Bank National Association, Minneapolis, MN	Jul. 1999	CRA Decision No. 96
Bank One, Indiana, N. A., Indianapolis, IN	Jun. 1999	CRA Decision No. 95
Bank of America N. T. and S. A., San Francisco, CA	Jun. 1999	CRA Decision No. 94
National City Bank, Cleveland, OH	Jun. 1999	CRA Decision No. 93
MBNA America Bank, N. A., Wilmington, DE	Apr. 1999	CRA Decision No. 92
Commerce Bank, N. A., Cherry Hill, NJ	Apr. 1999	CRA Decision No. 91
Community Banks, N. A., Millersburg, PA	Apr. 1999	CRA Decision No. 90
Bank of America N. T. and S. A., San Francisco, CA	Mar. 1999	CRA Decision No. 89
San Diego National Bank, San Diego, CA	Mar. 1999	CRA Decision No. 88
Albany Bank and Trust, N. A., Albany, GA	Mar. 1999	CRA Decision No. 87
First National Bank and Trust Company, Rogers, AR	Feb. 1999	CRA Decision No. 86
The Huntington National Bank, Columbus, OH	Feb. 1999	CRA Decision No. 85

Summaries of Significant Decisions Related to the Community Reinvestment Act

During 1999, the OCC approved three merger applications from U.S. Bank National Association, Minneapolis, Minnesota to acquire four banks located in California. The OCC received numerous public comments in connection with these applications. The commenters raised many concerns including U.S. Bank's proposed branching network, record of lending to minorities, and record of small business and small farm lending. OCC examiners conducted a limited assessment of the bank's record of CRA performance in California and investigated the specific CRA-related allegations raised by the commenters. In addition, in connection with the bank's application to acquire Santa Monica Bank and Bank of Southern California, the OCC held a private meeting in Los Angeles with over 30 individuals representing elected officials and community organizations to hear their concerns. The OCC's investigation and analysis of the record disclosed no information that was inconsistent with approval of these applications.

In May, the OCC denied United National Bank's application to relocate a branch office located in the City of Industry, California. The denial was based upon the bank's inability to implement and adhere to its CRA improvement plan as required by the OCC's May 27, 1998 conditional approval to establish a branch in Irvine, California. The 1998 branch application had been conditioned upon the bank submitting, implementing, and adhering to an acceptable CRA improvement plan addressing the concerns identified during a recent CRA examination. However, after the bank made additional qualifying investments in 1999, the bank reapplied to relocate the City of Industry branch. In August, the OCC approved the application with the pre-relocation requirement that the bank first receive a "satisfactory" or better CRA rating at its next exam.

The OCC conditionally approved applications from two different banks each with a "needs to improve" CRA rating. Marquette National Bank, Chicago, Illinois applied to establish two branch offices and Net First National Bank, Boca Raton, Florida applied to relocate its head office. Prior to opening the branches or relocating the head office, both banks were required to provide a CRA plan, acceptable to their respective supervisory office, addressing its CRA weaknesses. Both approvals were conditioned upon the bank implementing and adhering to its CRA plan.

The OCC approved an application from Bank One, Indiana, National Association, Indianapolis, Indiana to merge with NBD, National Association, Indianapolis, Indiana and NBD Bank, Elkhart, Indiana. The OCC received a copy of a letter from a Gary-based community organization expressing concern with

the various local aspects of the merger. OCC examiners investigated and found that the consolidating downtown Gary branches were close to each other and that Saturday hours would be retained at one of the surviving locations.

The OCC approved two applications from Bank of America that presented CRA issues. In February, the OCC approved applications from Bank of America National Trust and Savings Association (BANTSA), San Francisco, California, and NationsBank, National Association, Charlotte, North Carolina that resulted in BANTSA's branches in New Mexico becoming branches of NationsBank. In May, the OCC approved an application that merged BANTSA and NationsBank. While the OCC did not receive any direct comments from the public on these applications, the OCC considered the comments that had been submitted to the Federal Reserve in connection with the holding company merger. As part of the merger, BankAmerica Corporation announced its intention to fulfill its publicly announced 10-year, $350 billion community reinvestment and development commitment. The decision documents note that BankAmerica Corporation committed to provide the OCC with copies of every national, state, and local report produced during the life of the 10-year commitment. The decision documents also discuss the concerns raised by the commenters and the results of the OCC's investigation into those concerns.

Change in Bank Control Act

The Change in Bank Control Act of 1978 (CBCA) requires that parties who wish to acquire control of a national bank through purchase, assignment, transfer, or pledge, or other disposition of voting stock notify the OCC in writing 60 days prior to the proposed acquisition (unless a filing is required under the Bank Merger Act or the Bank Holding Company Act). Any party acquiring 25 percent or more of a class of voting securities of a national bank must file a change in bank control notice. In addition, if any party acquires 10 percent or more (but less than 25 percent), that party must file a change in bank control notice under certain conditions. The acquiring party must also publish an announcement of the proposed change in control to allow for public comment.

The CBCA gives the OCC the authority to disapprove changes in control of national banks. The OCC's objective in its administration of the CBCA is to enhance and maintain public confidence in the national banking system by preventing identifiable, serious, adverse effects resulting from anti-competitive combinations or inadequate financial support and unsuitable management in national banks. The OCC reviews each notice to acquire control of a national bank and disapproves transactions that could have serious harmful effects. If the notice is disapproved, the disapproval letter contains a statement of the basis for disapproval. The OCC's actions for 1999 are reflected in Table 4. As reflected in the table, the OCC received 13 change in bank control notices in 1999, continuing a declining trend. Of the 13 notices received, the OCC acted on 12, all of which the OCC did not disapprove. The OCC's decision on the remaining notice is pending. Also in 1999, of 2 notices that were filed in 1998 but not acted upon in that year, one was withdrawn and the other the OCC did not disapprove.

Community Affairs Department

The deputy comptroller for Community Affairs heads the Community Affairs department, which oversees the operations of the Community Development, Community Relations, and Minority and Urban Affairs divisions. Community Affairs encourages national banks to be leaders in the provision of credit, investments, and financial services to underserved communities and consumers.

Table 4—Change in Bank Control Act*
1988–1999

Year	Received	Acted on	Not disapproved	Disapproved	Withdrawn
1999	13	12	13	0	1
1998	17	12	11	1	5
1997	24	24	24	0	0
1996	17	15	13	0	2
1995	15	16	16	0	0
1994	15	16	15	1	0
1993	28	30	21	5	4
1992	30	29	21	4	4
1991	20	15	6	6	3
1990	31	42	32	5	5
1989	55	55	48	3	4
1988	45	42	34	4	4

*Notices processed with disposition

Source: Bank Organization and Structure, Comptroller of the Currency.

Community Development Division

The Community Development division provides expert advice and counsel to the Comptroller and senior management on community and economic development policy and procedures for national banks. This guidance helps to facilitate national banks' and Community Development Financial Institutions' participation in the emerging domestic community development market. Other division activities include the following:

(1) Review of bank public welfare investments,

(2) Coordination of educational initiatives for national banks on emerging community development issues,

(3) Provision of technical expertise and resource development for related OCC units and policy makers,

(4) Education for examiners and community reinvestment development specialists, and

(5) Representation on internal and external task forces and committees.

In May, the St. Louis field office collaborated with the division to organize a one-day forum in St. Louis, Missouri on "Small Business Banking Issues." The forum was addressed by leading experts who discussed a broad range of emerging topics relating to small business banking. The OCC brought together a diverse group of bankers and other interested participants to discuss issues that affect small business lending and investing, and how banks can better assist small business through new approaches to financing. The division also distributed a compendium of the proceedings from a 1998 small business symposium in the publication "National Forum on Small Business Banking Issues."

In the fall, the division took on a lead role in reviewing efforts by banks to provide retail financial services in underserved neighborhoods. With assistance from Economic and Policy Analysis and the senior advisor for Special Projects, the division's research focused on structural approaches for providing these services, including bank consortia, locally tailored products and services, technology, and alternative delivery systems.

The division published its *Community Developments* newsletter that reaches almost 2,000 bankers and community advocates. This newsletter provides highlights of innovative bank community development programs, regulatory updates on community and economic development issues, and related news on federal and state programs. The newsletter responds to requests from bankers and others for more details about community economic development initiatives. Articles are written by OCC employees as well as experts from the banking and community development arenas.

In 1999, the division continued to enhance communications with bankers, examiners, and other community development partners through the Community Affairs home page on the OCC Internet Web site. This Web site provides users with access to all of the OCC's community and economic development initiatives and policies. The site also provides users with selected links to other government agencies, national intermediaries, and other external sources.

In 1999, the division approved 146 national bank community development project investments totaling $1.87 billion under the "Part 24" Community Development Investments Program. These funds were used to help produce affordable housing, finance small businesses, and foster revitalization projects in low- and moderate-income areas or areas targeted for redevelopment. Since the inception of the program in 1965, the OCC has approved more than 1,500 national bank investments in community development corporations (CDCs) and community development projects. Many of those investments were in one-time projects that have been completed, or were in single-purpose CDCs whose missions have been accomplished. National banks and their community partners have invested over $10.5 billion in these investments. Significant developments under the Part 24 program in 1999 included:

- The release of an intranet-based application which allows any user of the OCC's intranet (OCCnet) to obtain information on these Part 24 investments through a simple database query.
- The approval of the first real estate investment trust (REIT) created to foster affordable housing and community development (Mellon Bank, N.A.). The REIT will provide capital investments to projects that are designed to support community development including affordable housing for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing small businesses; or activities that revitalize or stabilize low- or moderate-income geographies. This REIT was formed in conjunction with the Local Initiatives Support Corporation (LISC) a national nonprofit, community development intermediary. LISC will be responsible for managing and maintaining the properties in the trust's portfolio.

Division staff co-chaired a working group that issued both proposed and final rules pertaining to Part 24 investments. A major goal of the new regulation is easing the regulatory

burden associated with national banks' participation in the program. The OCC received valuable input from program participants, which resulted in a significant broadening of the scope of self-certifiable activities outlined in the Final Rule published on December 19, 1999.

Throughout 1999, the division provided leadership on community development issues within the OCC and among other governmental agencies in the following areas:

- Division staff chaired the Native American Working Group, which works with tribal leaders, and other Native Americans interested in chartering Native American owned national banks. The division participated in workshops for bankers focused on identifying and removing barriers to lending and investment in Indian country.
- Staff of the division served on: (1) the National Brownfields Partnership Steering Committee, an interagency effort to identify methods of remediating environmentally contaminated properties, and (2) the Micro-Enterprise Working Group, an interagency effort to increase funding for micro-enterprises.
- The division organized seven roundtable discussions with government and public organizations for OCC staff to learn more about emerging issues and programs available to banks to further their community development efforts.
- The division assisted in preparing an article for the Comptroller that appeared in the *NeighborWorks Journal,* a magazine on community-based development published quarterly by the Neighborhood Reinvestment Corporation. The article addresses issues likely to be faced by the unbanked in the twenty-first century and made recommendations on how banks, community organizations, and the government can work together to bridge a widening gap between low-income consumers and traditional financial service providers.
- Division staff served as presenters or discussants at 12 national conferences and workshops.

Community Relations Division

The Community Relations division is responsible for the OCC's outreach and external relations with consumer and community organizations, particularly national nonprofit public interest organizations that work with national banks and focus on community reinvestment, consumer protection, and community development issues.

The division is responsible for organizing and coordinating the Comptroller's formal and informal outreach with community and consumer organizations at "Meet the Comptroller" meetings held in the OCC's six districts and roundtables about bank customer issues held at headquarters. It assists in the preparation of speeches, testimony, or other presentations for the Comptroller and senior OCC officials before consumer and community organizations. In addition, the division recommends new policies and procedures to guide the OCC in its relationship with the public interest sector.

The division also provides analysis and advice to the Comptroller and OCC's senior management on the interests and activities of consumer and community organizations which affect the OCC, the national banking system, or the relationship of national banks to their local communities. It also offers guidance on potential consumer and community reaction to OCC actions, monitors the overall direction of public interest advocacy directed at the financial services marketplace, and formulates strategies for ensuring that OCC positions are clearly and appropriately communicated to these sectors.

In 1999, the Community Relations division:

- Organized outreach issue roundtables for the Comptroller with Washington-based national organizations on the community reinvestment, community development, and affordable housing issues;
- Organized meetings between the Comptroller and national community organization leaders;
- Provided assistance and information for the Comptroller's keynote addresses at three conferences sponsored by community reinvestment, housing, and consumer organizations: National Community Reinvestment Coalition on March 19, the Neighborhood Housing Services of New York City on May 5, and the Consumer Federation of America on December 2;
- Participated in conferences and other events sponsored by community and consumer organizations;
- Held meetings with leaders of 16 national organizations;
- Helped organize an OCC-sponsored meeting in Los Angeles on September 27 with representatives of California-based community and minority organizations who filed a CRA protest against U.S. Bank; and
- Provided support services to the OCC's community reinvestment and development specialists (CRDs).

Minority and Urban Affairs Division

The Minority and Urban Affairs (MUA) division's primary focus is external relations with national and regional civil rights and minority-based organizations, particularly those with interests aimed at access to financial services. MUA is responsible for advising OCC senior management on

the banking and financial service interests of these organizations and offers guidance to management on the concerns that these organizations have relating to the OCC's supervision of the national banking system.

In 1999, MUA continued to expand its list of contacts to national minority organizations. In addition to establishing new relationships with a number of organizations, MUA met with leaders of the National Urban League and the NAACP to reaffirm the OCC's continued interest in identifying and addressing areas of mutual interest. Targeted areas included: enhancing Community Reinvestment activities; enhancing Community Development activities; enhancing access to financial services and financial literacy; sharing information on OCC regulations; and sharing information on Electronic Funds Transfer '99 (EFT '99), the Debt Collection Improvement Act of 1996.

Also in 1999, MUA staff planned follow-up activities to the Banking on Minority Business forums in Chicago, Illinois and Charlotte, North Carolina. In Charlotte, city officials and OCC staff have partnered to develop a resource guide to financial services for minority entrepreneurs in the Charlotte area.

In a continuing effort to raise awareness of the OCC in minority communities, MUA staff exhibited and participated at the Black Enterprise, NAACP, National Urban League, and Congressional Black Caucus conferences and the National African American Chamber of Commerce Conference. MUA also managed the OCC's National Minority Internship Program, which annually provides an avenue for minority students to work in a professional environment and acquire skills to enhance their marketability for future job opportunities.

Economic and Policy Analysis Department

The Economic and Policy Analysis (E&PA) department is responsible for advising the Comptroller on major economic policy, capital-related policies, and financial and regulatory issues affecting the national banking system. The E&PA department monitors the financial health of the banking system to identify sources of risk; analyzes the determinants of bank competitiveness and risk-taking; evaluates the effects on OCC operations of changes in the regulatory environment. The E&PA department provides technical support to examiners in the assessment of banks' risk measurement methods and the use of statistical tools to assess fair lending compliance, and drafts congressional testimony for the Comptroller.

Policy Analysis Division

The Policy Analysis division has responsibility for conducting analysis and research that contributes to the development of OCC policy positions and to the understanding of the impact of policies on the performance of the banking industry. The division is also responsible for assessing the economic impact of proposed OCC regulations and supporting the preparation of congressional testimony. The Policy Analysis division comprises two units, Policy Development and Special Studies.

Policy Development

The Policy Development unit typically focuses on shorter-term analyses of public policy issues, and presents the results of its work in memoranda and "white papers," written for general audiences within the OCC. Recent projects have examined the economic rationale for ATM "surcharges," the location of the headquarters of large banking organizations, supervisory issues that arise from greater bank participation in insurance markets, and the subsidies to the federal supervision of state banks.

Special Studies

The Special Studies unit's work, for the most part, includes shorter-term analyses and longer-term research projects. Currently the unit's work is focusing on the impact of the adoption of new technology on the performance of national banks, efforts to revise supervisory capital regulations, understanding demographic factors that contribute to whether one uses a bank to obtain financial services, and the role banks play in serving the market for small business credit. Special Studies staff serve on the OCC's Privacy Working Group, Internet Banking Working Group, and an interdisciplinary group that reviews corporate applications that raise issues regarding the application of technology to banking.

Risk Analysis Division

The Risk Analysis division provides applied, sophisticated knowledge of quantitative economic modeling to bank examiners and policy makers in the OCC. The economists in the division provide direct support to examiners and policy makers on risk modeling, decision modeling, and modeling to detect compliance with fair lending laws. The outlet for this support is direct participation in exams, the construction of models and tools for use by examiners, consultation with examiners and policy makers, educational outreach and training of examiners, and written materials for use by examiners and policy makers. The provision of expertise by the division requires the pursuit of a research agenda that maintains and improves knowledge and skill in modeling. The division is comprised of three units, Market Risk Modeling, Credit Risk Modeling, and Financial Access and Compliance.

Market Risk Modeling

This work deals both with market risk as the agency defines it (financial risk of the marked-to-market portion of the business—primarily the trading desk, including derivatives trading) and interest rate risk (market risk in the banking book, which is not marked-to-market). The major outlets for our work in this area are examinations in which we help examiners evaluate the adequacy of the sophisticated quantitative models used by banks. For example, a large part of our work in recent years has been the evaluation of the risk measurement systems for bank trading desks, called value-at-risk models. We also do exams in which we evaluate models that banks build to price their over-the-counter derivatives or to value assets. And our biggest outlet for work in this area continues to be the evaluation of models that banks build to estimate their exposure to interest-rate risk. For large banks, this means reviewing banks' own models. For community banks, we offer examiners a simple interest-rate-risk benchmarking tool that we built, in case the bank has no model.

Credit Risk Modeling

This is the newest standalone unit in the division. It was created to bring together traditional work on credit scoring with work in the newly emerging area of portfolio credit risk modeling. Credit scoring, which is the use of statistical models to make decisions, has been a traditional outlet for our services, and it continues to be a growing source of demand. In contrast, we are building a capability in portfolio

credit modeling in *anticipation* of demand. It seems likely that a new risk-based capital accord will rely on internal credit risk models, and that is having a stimulating effect on work in this area.

Financial Access and Compliance

This work deals mostly with compliance with fair lending laws. We evaluate statistical evidence on behalf of compliance examiners to see if there is a compelling case that banks are treating members of prohibited basis groups (race, sex, etc.) unequally. Sometimes, we build econometric models designed to mimic a bank's professed loan underwriting process and use that to test the hypothesis that the bank is also taking the prohibited characteristic into account. Most of the time, we do not find evidence of discrimination. However, in one protracted case, the OCC made a referral to the Justice Department and the bank eventually accepted the charge of discrimination in an out of court settlement.

Economic Analysis Division

The Economic Analysis division is responsible for analysis of bank condition and performance broadly defined. This includes assessments of trends and potential shocks that could affect bank activities, including financial market developments, international influences, trade-related spillovers, nonbank industry developments, and regional and macroeconomic concerns. The division provides direct analytical support to senior staff with formal bank condition presentations, the National Risk Committee, National Credit Committee, large bank senior staff and examiners-in-charge (EICs), and district staff.

Bank Performance Analysis

The Bank Performance Analysis unit provides applied financial and economic analysis of key issues that may significantly affect banking industry performance and, consequently, OCC supervisory policy and operations. Regular responsibilities include: preparing the director's quarterly press conference on the condition of the banking industry; writing a quarterly article on the condition of the banking industry that appears in the OCC *Quarterly Journal;* and contributing the twice-quarterly National Risk Committee presentations to the Executive Committee on the Condition of the Banking Industry. Recent analyses and presentations prepared by unit staff include: the slippage in performance and supervisory indicators of "community" national banks; the potential impact on future bank earnings from an increase in loss provisioning; the development of risk measures that project quarterly expected returns, variances, and probabilities of loss for each of 11 asset-concentration-based peer groups of community banks; and an analysis of how changes in particular sources of earnings are contributing to changes in bank profitability.

Statistical Analysis

The Statistical Analysis unit is primarily responsible for the development and maintenance of information systems and tools necessary for the delivery of the division's analytical products. The primary systems include: the complete bank information system, which includes bank call report data, supervisory data on national banks, branch data, and holding company data; the economic information system, which includes economic and financial data and graphics; nonbank industry and company data, which includes information from Standard and Poor's and Moody's, Loan Pricing Corporation, and Robert Morris Associates; and the ADC toolkit, which includes tools and techniques for bank risk assessments for examiners and key industry studies. This group is developing "reference pages" of key economic and financial relationships immediately pertinent to the large bank EICs, the large bank senior management, and the National Credit Committee.

Financial Analysis

The Financial Analysis unit provides economic, financial, and banking analysis to the assistant deputy comptrollers for community banks and the large bank EICs. This group is comprised of Washington staff and field staff in each district, with many of the latter serving as key contributors to the district risk evaluation process. The group produces a macroeconomic report monthly, regional economic reports semiannually, and a commercial real estate report quarterly for use by examiners and members of the National Risk Committee and National Credit Committee. The staff provides extensive support to bank outreach meetings and efforts and to special needs of the district staff. This unit is directly responsible for special in-depth industry studies in areas with high bank-loan concentration and potential vulnerabilities, including health care, oil, retail credit, consumer credit, commercial real estate, and agriculture. This unit also has developed a bank failure model to identify the probability of failure over the longer term.

International Affairs Department

International Banking and Finance Department

The International Banking and Finance (IB&F) department supports OCC supervision of the federal branches and agencies of foreign banks in the United States and maintains OCC's relationships with the international financial community and foreign supervisory organizations. The department provides policy advice and technical expertise and analysis to the OCC on international banking and financial matters, including foreign regulatory trends, country risk evaluation, and the evolution of foreign financial systems, institutions, and supervisory and regulatory processes.

The IB&F department represents the OCC on interagency projects and activities affecting international banking supervision policy and regulation. These activities include cooperation with federal and state bank supervisors on specific initiatives in the supervision, licensing, and regulation of foreign banks operating in the United States, particularly the Interagency Foreign Banking Organization Supervision Program.

The department supports the OCC's Federal Branch Program, which supervises, licenses, and regulates federal branches and agencies of foreign banks in the United States. In that regard, IB&F provides supervisory policy and procedural support and guidance on the supervision of federal branches and agencies. The department also serves as the focal point for information on foreign banks that operate federal branches and agencies and coordinates communications with those banks' home country supervisory authorities and their senior management.

In its role as staff coordinator of the OCC's participation in the Basel Committee on Banking Supervision, and the Joint Forum on Financial Conglomerates, IB&F works with other OCC groups in support of U.S. efforts to achieve international harmonization of financial services supervision. The department coordinates and provides technical support to the Treasury Department on the G–7 summit process.

The IB&F department also conducts research and analysis on international economic and bank supervision and regulatory matters. The department also supports OCC examiners and other staff engaged in domestic and international supervisory activities, as well as assists in the development and implementation of OCC banking supervisory and regulatory policies and procedures.

International Banking and Finance also develops, analyzes, and distributes information on the global banking and financial environment in which national banks operate; the banking, financial, and financial services supervisory systems in the major countries of the world; and foreign banks that operate federal branches and agencies in the United States. A semiannual report, the "Global Report," is available on the OCC's intranet site. As the OCC representative on the Interagency Country Exposure Review Committee (ICERC) of U.S. bank regulatory agencies, IB&F develops and analyzes information on and assesses risk in international lending, including the evaluation of transfer risk associated with exposures to countries experiencing difficulty servicing their external debt. Through IB&F, the OCC provides the permanent ICERC secretariat and rotates as chair of the ICERC every third year.

The IB&F department is the OCC's focal point for communications with foreign supervisors to address policy and operational issues. Toward the goal of enhancing supervisory coordination and information sharing, IB&F, in consultation with the law department's Counselor for International Activities, negotiates information-sharing agreements with interested foreign supervisors. In 1999 the OCC, Federal Reserve Board and the European Commission executed an information-sharing agreement. International Banking and Finance also acts as liaison, on a variety of issues related to global financial services supervision, between the OCC and the Department of the Treasury, International Monetary Fund, The World Bank, and other international organizations.

The IB&F staff coordinates requests from around the world to provide technical assistance. This assistance includes visits and training sessions hosted by IB&F staff in Washington as well as participation by OCC on technical assistance missions in the requesting country.

Public Affairs Department

The Public Affairs department, headed by the senior deputy comptroller for Public Affairs, is composed of the Banking Relations and the Congressional Liaison divisions and the Public Affairs department. The Public Affairs department is headed by the deputy comptroller for Public Affairs and comprises the special advisor for Executive Communications and the Communications and Press Relations divisions.

Banking Relations Division

The Banking Relations division acts as liaison to bankers, state bankers' associations, banking trade groups, and state bank supervisors.

The division provides advice to the Comptroller and senior policymakers and is responsible for identifying proposed regulatory and industry actions that relate to OCC activities. It formulates specific approaches for ensuring that OCC's position is presented and that information is disseminated.

The division recommends new policies, concepts, and procedures to guide the OCC in its relationship with the banking industry. It prepares and directs the preparation of briefing materials for use in meetings among OCC officials and banking industry groups and assists with preparation of testimony or presentations for the Comptroller and senior officials. The division maintains state-by-state in-depth analyses of banking legislation and major issues including existing, proposed, and potential legislation.

Banking Relations also helps district offices develop effective outreach programs with bankers and state banking trade associations. The division coordinates and hosts in-house meetings with state banking trade associations and is responsible for planning and organizing off-site "Meet the Comptroller" seminars attended by chief bank executives and OCC's Executive Committee to discuss changes in the banking industry.

Congressional Liaison Division

The Congressional Liaison division is responsible for the OCC's relations with members of Congress, and congressional committees, subcommittees, and staff.

The division provides analysis and advice to the Comptroller and senior OCC policymakers on congressional activities that affect or could affect the OCC, the national banking system, or the financial services marketplace. It also offers guidance on potential congressional reaction to OCC actions.

As part of its responsibilities, the division maintains regular contact with congressional members, committees, subcommittees, and staff to promote effective communication and ensure that OCC's interests are represented.

The division is the focal point of congressional inquiries, including requests for testimony, staff studies, or other support. It assists in the preparation of testimony, comments, briefings, and staff studies relating to congressional actions, as well as responses to constituent inquiries. The division provides any other necessary liaison and information services relating to congressional and legislative matters.

Public Affairs Department

The deputy comptroller for Public Affairs heads the Public Affairs department, oversees the operations of the Communications and Press Relations divisions, and is responsible for managing internal and external communications activities. The deputy comptroller is charged with bringing an external perspective to all agency issues and works closely with the senior officials of the agency to identify issues and activities that need to be communicated inside and outside the agency. In addition, the deputy comptroller provides advice and counsel to the Comptroller and Executive Committee on media relations and communications activities and policies.

The divisions overseen by the deputy comptroller for Public Affairs serve as the agency's main external contact and communicate the OCC's mission and activities to the public. Department activities include identifying and developing communication strategies for major OCC initiatives and proposals and implementing those strategies.

Communications Division

The Communications division provides publications support and information services for the agency. Specifically, the division:

- Provides writing, editorial, production, and printing support for all agency publications, including the *Quarterly Journal*, the *Comptroller's Handbook*, the *Comptroller's Corporate Manual*, and the *Comptroller's Handbook for Compliance*, as well as OCC policy issuances such as advisory letters, alerts, and bulletins.
- Plans approaches to disseminating information and designs appropriate vehicles for specific messages.

- Responds to inquiries from the public about the agency's mission and activities.
- Develops and maintains the agency's Internet presence (http://www.occ.treas.gov), which offers quick access to agency materials.
- Uses appropriate technological means to improve and maintain internal and external communication for the OCC.
- Processes all initial requests filed under the Freedom of Information and Privacy acts.
- Operates and oversees the Public Information Room, which offers easy access to the agency's public documents.
- Certifies copies of bank corporate documents.

The Communications division's 1999 accomplishments reflect a continued emphasis on public access to information. The Public Information Room offers the public quick access to agency documents, including press releases, issuances, CRA evaluations, comment letters on proposed regulations, securities filings, enforcement actions, and similar information. The room is located on the first floor and is open to walk-in visitors from 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 3:30 p.m. During 1999, the public information staff handled 3,000 requests for information within 24 hours to the general public and a variety of other public information assistance and services for OCC employees. Also in 1999 the Public Information Room received an all-time record number of comment letters on a proposed regulation. The proposal, known as "Know Your Customer," stirred up much negative feeling throughout the country, and, as a result, we received over 20,000 comments. The Public Information staff assisted the OCC's law department in indexing and photocopying each comment for every comment reviewer. Upon completion of that gargantuan task, the Public Information staff established public files for the public to view and copy.

In 1999, the OCC's Internet site continued to gain in popularity. The site (at http://www.occ.treas.gov), managed by the Electronic Publishing unit, gives the public quick access to a wide range of OCC documents. The site continues to provide access to actual CRA evaluations as well as a searchable database of the CRA ratings; a database of community groups, with an opportunity for groups to register; issuances and press releases, including major speeches and congressional testimony; and a variety of publications, including consumer assistance materials, the *Weekly Bulletin* (a report of agency corporate applications and actions), and the monthly *Interpretations and Actions*. Significant additions to the publications available on the site included the *Comptroller's Handbook,* two companion publications to the *Comptroller's Corporate Manual,* and lists of current and rescinded OCC issuances. During 1999, about 3 million pages of information were made available through this medium.

The Publications and Editorial Services personnel provide editorial and writing assistance to other OCC units and publish OCC publications. New external publications for 1999 included three new booklets in the *Comptroller's Handbook,* one booklet in the *Comptroller's Handbook for Compliance,* and volumes 1, 2, and 3 of *Banking Regulations for Examiners.* In addition, the Communications division continued to produce many periodicals and series including the *Quarterly Journal* and *Interpretations and Actions*. Other important special publications include the *1999 Survey of Credit Underwriting Practices; A Guide to the National Banking System;* "Assistance for Customers of National Banks;" and "Check Fraud: A Guide to Avoiding Losses."

In 1999, the Publications and Editorial Services unit continued to produce a monthly employee newsletter and to distribute OCC issuances and other policy papers to national bank examiners and national banks.

Under the authority delegated by the Comptroller, the department is responsible for making initial determinations on requests for records of the OCC under the Freedom of Information Act and the Privacy Act of 1974. In 1999, the Public Disclosure unit received almost 14,000 such requests, 4,000 of which were handled through the OCC Information Line, a fax-on-demand system (releasing 31,000 pages of information).

The division is also responsible for providing certified copies of national bank corporate documents. By the end of 1999, the Public Disclosure unit issued almost 1,600 certificates for the following seven types of certificates: corporate existence, charter, corporate title change, articles of association, merger, fiduciary powers, and declaration of insolvency.

Press Relations Division

The Press Relations division works to increase public understanding and awareness of the OCC's mission by providing news media relations support to the agency and senior management. Specifically, the division:

- Prepares and issues press announcements on agency actions or policies, including new regulations, supervision guidance, new publications, statistical information (such as the quarterly report on bank derivatives activities), major conferences, and speeches by senior OCC officials.

- Develops briefing materials and support information, such as questions and answers, for agency initiatives in which there is press interest, such as the OCC's bank supervision activities to ensure that national banks will be prepared for the year-2000 date change.
- Supports agency staff in dealing with news media inquiries, by providing advice, counsel, and training.
- Responds to press inquiries on all the OCC's activities, policies, and initiatives.

Administration and Chief Financial Officer Department

Equal Employment Programs Division

The Equal Employment Programs (EEP) division is responsible for ensuring that every employee of the Office of the Comptroller of the Currency (OCC) works in an environment free of inappropriate exclusionary practices without regard to race, color, national origin, sex, religion, age, sexual orientation, or disability. The EEP division is committed to honoring these principles and assuring that the OCC complies with federal policy to provide equal opportunity for all persons, prohibit unlawful discrimination and retaliation, and maintain a continuing affirmative employment program.

In FY 1999, the EEP developed OCC's Affirmative Employment Programs (AEP) Plan in compliance with the Equal Employment Opportunity Commission's requirement that agencies' major operating components prepare an annual AEP Plan. The AEP Plan identified new and/or continuing problems or barriers to the hiring, advancement, and retention of minorities and women. The AEP Plan update also establishes AEP objectives and action items to be achieved during fiscal year 2000.

Other EEP accomplishments included:

- the development of guidelines and procedures for the use of mediation in the EEO complaint process;
- the selection of a core work group to oversee the planning and implementation of the multi-year affirmative employment program plan (MYAEPP);
- the completion of quarterly analyses on OCC's workforce profile, Large Bank Supervision's lateral assignments, Examiner Development Initiative selections, opportunities board selections, and first quarter examiner hiring to measure OCC's progress toward meeting the objectives in the OCC's AEP Plan and the Hispanic Employment Action Plan;
- the completion and distribution of quarterly summary reports on Special Emphasis Program activities and accomplishments to OCC's senior managers; and,
- the implementation of a customer service survey to assess the OCC's EEO complaint processing program.

The EEP division met its oversight responsibilities to the OCC's Equal Employment Opportunity Advisory committees (EEOAC) and Council by attending quarterly district, headquarters, and Large Bank EEOAC meetings, as well as providing information to the EEOACs and Council on changes in laws, regulations, procedures, and relevant technical guidance on other EEO issues as required.

Administration Department

Management Improvement Division

The Management Improvement division serves as the OCC's liaison with the U.S. General Accounting Office (GAO) and the Department of the Treasury's Office of the Inspector General (OIG). Management Improvement facilitates audits, evaluations, and investigations and assures that appropriate corrective action is taken by the OCC. In addition, the division coordinates OCC reporting for compliance with government-wide program initiatives such as the federal activities inventory. Management Improvement also handles requests from the inspectors general of other agencies who are interested in comparative information or opinions from the OCC related to programs that they are auditing.

During 1999, the OIG and the GAO continued to focus their attention on the OCC's efforts to ensure that the banking industry and its own internal systems were ready for the year-2000 date change. In addition, they both reviewed the OCC's implementation of the requirements of the Government Performance and Results Act. Action was taken in response to the auditors' recommendations and suggestions.

Other audit reports issued by the GAO covered a variety of banking issues with input from the OCC. They included such topics as money laundering, electronic banking, and fair lending and community reinvestment issues. The OCC is in process of implementing GAO's audit recommendations.

Human Resources Division

The Human Resources (HR) division provides the delivery of services in the areas of recruitment and staffing, compensation and benefits, employee relations, performance management, and personnel systems and analysis. During 1999, Human Resources' recruitment program was in full swing and HR employees undertook a number of activities to help OCC achieve its hiring goals. First, HR instituted a new, decentralized process designed to improve the effectiveness and efficiency of the program. Then, to ensure there was a cadre of trained individuals who could effectively recruit and interview candidates, HR developed and delivered a new Recruiters Workshop. The HR division also unveiled a new recruitment brochure, redesigned

the career page on the OCC Internet Web site, and ran numerous ads in both print and electronic media to better attract attention to opportunities with the OCC and reach a diverse audience of potential candidates. The division's efforts were not limited to the recruitment of experienced individuals, however, and with the job analysis and design of a new knowledge test completed, the OCC was able to return to the college campus in 1999 to recruit for entry-level positions. Human Resources also took delivery of new tests to assess the communication skills of external candidates for examiner positions at OC-12 and below and is planning for the implementation of these tests next year.

The long-term total compensation review got under way in 1999. Division staff worked with the Hay Group to obtain and analyze data for use by the Oversight Committee and the Executive Committee in making decisions on the future direction of the OCC compensation program. Human Resources also has representatives on a group established to review OCC's current performance management practices to ensure that the OCC's compensation and performance management systems will work well together in supporting organizational objectives.

In 1999, Human Resources took a first step toward modernization and integration of its information systems, going live with the first phase of PeopleSoft. This phase covers Personnel Action Request processes currently accomplished through the use of SF-52s and SF-50s. Extensive business process flows, procedures, and associated documentation were developed in support of this implementation and the transition from the current National Finance Center system was relatively seamless.

Human Resources staff devoted a great deal of time in 1999 to developing an OCC 401k plan. The 401k program design is complete and procurement of a funds manager will take place next year, with implementation of the program scheduled for July 2000.

The division also began work on rebuilding its infrastructure and strengthening quality assurance. A system was established for capturing and documenting HR guidance and procedures to ensure consistency in their application. In addition, Personnel Management Evaluations were conducted in each district and headquarters to assess compliance with governing regulations and policies and identify areas needing improvement.

Human Resources continued to promote flexible work arrangements in order to minimize the hardship associated with travel and relocation, reduce costs, and take advantage of changes in technology that enable "virtual" work arrangements. The division provided additional guidance on the use of "location negotiable" postings and issued a final policy on 4/10 work schedules based on the results.

Organizational Effectiveness Division

The Organizational Effectiveness division works consistently with all levels of OCC management to create a positive work environment that fosters teamwork, collaboration, and diversity through a broad array of processes. The division provides training, consulting, and individual coaching in a variety of areas including, but not limited to, diversity management, business process improvement, team effectiveness, team building, executive coaching, group and meeting facilitation, change management, bench marking, and best-practice studies.

During 1999, Organizational Effectiveness (OE) continued to devote a great deal of time working with management teams throughout OCC. The division provided guidance to managers in headquarters and at the district and field office levels, to assess the effectiveness of work processes and group dynamics within their teams. In addition, OE consulted with each of the district management teams to help them foster strategic thinking and alignment within their districts. As the teams became fully functional, individual managers identified areas in need of development and the division continues to provide executive coaching to these managers.

To promote movement towards a balanced scorecard of measures, OE worked with bank supervision management on the creation of a semi-annual employee survey and an analysis of the results. The unit also partnered with Continuing Education in the establishment of action learning teams to address issues raised by the survey.

Development of leaders continued to be a key focus for 1999. Organizational Effectiveness partnered with Continuing Education to participate in a nationwide bench marking study on leadership development at all levels within the organization. Building on the leadership competencies identified in 1998, the unit worked with senior management to create a process that identified and provided opportunities to further develop the desired leadership behaviors of people management, collaboration, and change management. The division has also expanded OCC's leadership development efforts by providing executive coaching for OCC management.

In conjunction with the Compensation Study, OE was a prime mover in the group established to review OCC's current performance management practices. The unit worked to

ensure that the compensation and performance management recommendations fit well together and were aligned with OCC's organizational goals and objectives.

Administrative Services Division

In 1999, the Administrative Services division (ASD) devoted significant resources to enhance the efficiency and effectiveness of administrative operations, year-2000 preparedness, and emergency management.

As part of its continuing emergency management activities, ASD worked closely with the Executive Committee to establish an Emergency Management Team (EMT). Each organizational unit, with the assistance of ASD, developed office contingency plans which would allow operations at each of OCC's facilities and alternate sites in the event of any disruption. As an extension of its emergency management activities, ASD also participated in the development of a year-2000 back-up plan and coordinated logistics for the OCC's operations on the century-date-change weekend.

New initiatives in 1999 included: providing internal copy pick-up and delivery service; initiating a Project Initiation Request Form for all new design project requests; preparing an inventory of vital records for headquarters and district offices to develop individual vital records programs; providing audiovisual equipment assistance for in-house meetings; and centralizing access to the OCC's electronic forms available on the intranet. Enhancements to ASD's intranet site, contributed to the Library's ability to respond timely to online reference requests; the automation of OCC Forms catalog to include hypertext links; and the timely processing of building services, supply, and conference office requests.

As a result of streamlining processes and operating under performance goals and measures established by the division in 1998, processing time was reduced for many processes. Specific processes exceeding their performance goals included the following: responding to planned and unplanned design projects; completing office reassignments as scheduled; processing on-site central records requests; processing conference room, supply, and copy center requests. Administrative Services also reduced the delivery time of incoming express mail.

Other significant activities completed in 1999 included the following: conducting a feasibility study of headquarters' office space utilization; developing a Washington Records Coordinators Manual; and completing 600 personnel security background investigations.

The division also provided guidance for OCC's educational outreach in Washington and the districts. Seventy-five volunteers from the Washington office provided assistance to students in a Washington, D.C. elementary school, OCC's Partner-in-Education. OCC is partners with 18 schools or school districts as part of the finance academy program.

Acquisitions Services Division

In 1999, acquisition and procurement functions were transferred from the Administrative Services division to form a separate Acquisitions Services division. The creation of a separate division allowed the OCC to comply with Federal Acquisition Regulations (FAR) and the Department of the Treasury's acquisitions regulations more fully. A director was recruited to head the division who had extensive executive experience in both government and private industry procurement.

A number of efforts are under way to improve the quality of OCC's procurement processes. These include, but are not limited to, the development of a quality assurance program that focuses on pre-solicitation and pre-awards; the training of staff to enhance their skill levels; and the improvement of the quality of written contracts.

Financial Services Division

The Financial Services (FS) division's mission is to provide leadership to promote the efficient management of OCC's resources and assets, quality financial services to customers based on their needs, and complete and useful financial information on OCC operations that fully supports financial and performance reporting.

Financial Services is in a transition period during which they will maintain current systems and processes while planning for new ones. The division has several important new initiatives and will perform their mission by:

- Managing OCC financial systems through financial systems strategic planning, development, administration, and liaison with mixed financial systems.
- Planning and budgeting for OCC through formulating, executing, and evaluating OCC operating and capital budgets; managing OCC staffing; strategic planning; and measuring performance.
- Developing and maintaining a strong OCC management accountability program, ensuring that effective internal controls are in place throughout the OCC, developing and maintaining a comprehensive body of OCC financial policies and procedures; and establishing quality and performance benchmarks for the Financial Services division.

- Developing a comprehensive asset management program for the OCC, establishing and carrying out an effective cash management strategy, managing OCC's debt collection program, and processing and managing all revenue receipts.
- Disbursing OCC payments in a timely manner, in accordance with sound business practices and all appropriate statutory and regulatory guidance. Financial Services disburses payments to employees for all non-payroll reimbursements, to commercial vendors for goods and services, and to other government agencies for goods and services provided through interagency agreements.
- Maintaining accounting records and preparing financial reports in a timely and accurate manner and in accordance with appropriate accounting principles and guidance. Financial Services prepares financial reports that provide full and accurate disclosure of the OCC's financial activities and that satisfy the information needs of OCC program managers.

During 1999, the Financial Services division:

- Comprehensively revised its mission and functions and developed a framework for a new organization structure to be implemented at the start of 2000.
- Began establishing a new management team of experienced professionals to lead the organization forward and foster creation of the environment described in its new vision statement.
- Developed a comprehensive corrective action plan to address internal control weaknesses and began planning for the development of a new OCC-wide management accountability program to be implemented during 2000.
- Redesigned the OCC's annual budget process. The new budget process is highlighted by its collaborative, inclusive approach with OCC program managers and a new thoughtfully designed mathematical model used for projecting anticipated revenue.
- Defined its requirements for a new financial management system and began earnest efforts to procure a new system with a target date of January 1, 2001 for implementation.
- Began a comprehensive review of existing accounting and financial management policies and procedures. Revised procedures will be documented and implemented during 2000.

Table 1—Comptrollers of the Currency, 1863 to the present

No.	Name	Dates of tenure		State
1	McCulloch, Hugh	May 9, 1863	Mar. 8, 1865	Indiana
2	Clarke, Freeman	Mar. 21, 1865	July 24, 1866	New York
3	Hulburd, Hiland R.	Feb. 1, 1865	Apr. 3, 1872	Ohio
4	Knox, John Jay	Apr. 25, 1872	Apr. 30, 1884	Minnesota
5	Cannon, Henry W.	May 12, 1884	Mar. 1, 1886	Minnesota
6	Trenholm, William L.	Apr. 20, 1886	Apr. 30, 1889	South Carolina
7	Lacey, Edward S.	May 1, 1889	June 30, 1892	Michigan
8	Hepburn, A. Barton	Aug. 2, 1892	Apr. 25, 1893	New York
9	Eckels, James H.	Apr. 26, 1893	Dec. 31, 1897	Illinois
10	Dawes, Charles G.	Jan. 1, 1898	Sept. 30, 1901	Illinois
11	Ridgely, William Barret	Oct. 1, 1901	Mar. 28, 1908	Illinois
12	Murray, Lawrence O.	Apr. 27, 1908	Apr. 27, 1913	New York
13	Williams, John Skelton	Feb. 2, 1914	Mar. 2, 1921	Virginia
14	Crissinger, D.R.	Mar. 17, 1921	Mar. 30, 1923	Ohio
15	Dawes, Henry M.	May 1, 1923	Dec. 17, 1924	Illinois
16	McIntosh, Joseph W.	Dec. 20, 1924	Nov. 20, 1928	Illinois
17	Pole, John W.	Nov. 21, 1928	Sept. 20, 1932	Ohio
18	O'Connor, J.F.T.	May 11, 1933	Apr. 16, 1938	California
19	Delano, Preston	Oct. 24, 1938	Feb. 15, 1953	Massachusetts
20	Gidney, Ray M.	Apr. 16, 1953	Nov. 15, 1961	Ohio
21	Saxon, James J.	Nov. 16, 1961	Nov. 15, 1966	Illinois
22	Camp, William B.	Nov. 16, 1966	Mar. 23, 1973	Texas
23	Smith, James E.	July 5, 1973	July 31, 1976	South Dakota
24	Heimann, John G.	July 21, 1977	May 15, 1981	New York
25	Conover, C.T.	Dec. 16, 1981	May 4, 1985	California
26	Clarke, Robert L.	Dec. 2, 1985	Feb. 29, 1992	Texas
27	Ludwig, Eugene A.	Apr. 5, 1993	Apr. 4, 1998	Pennsylvania
28	Hawke, John D., Jr.	Dec. 8, 1998	—	New York

Table 2—Senior Deputy and Deputy Comptrollers of the Currency, 1863 to the present

No.	Name	Dates of tenure		State
1	Howard, Samuel T.	May 9, 1863	Aug. 1, 1865	New York
2	Hulburd, Hiland R.	Aug. 1, 1865	Jan. 31, 1867	Ohio
3	Knox, John Jay	Mar. 12, 1867	Apr. 24, 1872	Minnesota
4	Langworthy, John S.	Aug. 8, 1872	Jan. 3, 1886	New York
5	Snyder, V.P.	Jan. 5, 1886	Jan. 3, 1887	New York
6	Abrahams, J.D.	Jan. 27, 1887	May 25, 1890	Virginia
7	Nixon, R.M.	Aug. 11, 1890	Mar. 16, 1893	Indiana
8	Tucker, Oliver P.	Apr. 7, 1893	Mar. 11, 1896	Kentucky
9	Coffin, George M.	Mar. 12, 1896	Aug. 31, 1898	South Carolina
10	Murray, Lawrence O.	Sept. 1, 1898	June 29, 1899	New York
11	Kane, Thomas P.	June 29, 1899	Mar. 2, 1923	District of Columbia
12	Fowler, Willis J.	July 1, 1908	Feb. 14, 1927	Indiana
13	McIntosh, Joseph W.	May 21, 1923	Dec. 19, 1924	Illinois
14	Collins, Charles W.	July 1, 1923	June 30, 1927	Illinois
15	Steams, E.W.	Jan. 6, 1925	Nov. 30, 1928	Virginia
16	Awalt, F.G.	July 1, 1927	Feb. 15, 1936	Maryland
17	Gough, E.H.	July 6, 1927	Oct. 16, 1941	Indiana
18	Proctor, John L.	Dec. 1, 1928	Jan. 23, 1933	Washington
19	Lyons, Gibbs	Jan. 24, 1933	Jan. 15, 1938	Georgia
20	Prentiss, William, Jr.	Feb. 24, 1936	Jan. 15, 1938	Georgia
21	Diggs, Marshall R.	Jan. 16, 1938	Sept. 30, 1938	Texas
22	Oppegard, G.J.	Jan. 16, 1938	Sept. 30, 1938	California
23	Upham, C.B.	Oct. 1, 1938	Dec. 31, 1948	Iowa
24	Mulroney, A.J.	May 1, 1939	Aug. 31, 1941	Iowa
25	McCandless, R.B.	July 7, 1941	Mar. 1, 1951	Iowa
26	Sedlacek, L.H.	Sept. 1, 1941	Sept. 30, 1944	Nebraska
27	Robertson, J.L.	Oct. 1, 1944	Feb. 17, 1952	Nebraska
28	Hudspeth, J.W.	Jan. 1, 1949	Aug. 31, 1950	Texas
29	Jennings, L.A.	Sept. 1, 1950	May 16, 1960	New York
30	Taylor, W.M.	Mar. 1, 1951	Apr. 1, 1962	Virginia
31	Garwood, G.W.	Feb. 18, 1952	Dec. 31, 1962	Colorado
32	Fleming, Chapman C.	Sept. 15, 1959	Aug. 31, 1962	Ohio
33	Haggard, Holis S.	May 16, 1960	Aug. 3, 1962	Missouri
34	Camp, William B.	Apr. 2, 1962	Nov. 15, 1966	Texas
35	Redman, Clarence B.	Aug. 4, 1962	Oct. 26, 1963	Connecticut
36	Watson, Justin T.	Sept. 3, 1962	July 18, 1975	Ohio
37	Miller, Dean E.	Dec. 23, 1962	Oct. 22, 1990	Iowa
38	DeShazo, Thomas G.	Jan. 1, 1963	Mar. 3, 1978	Virginia
39	Egerston, R. Coleman	July 13, 1964	June 30, 1966	Iowa
40	Blanchard, Richard J.	Sept. 1, 1964	Sept. 26, 1975	Massachusetts
41	Park, Radcliffe	Sept. 1, 1964	June 1, 1967	Wisconsin
42	Faulstich, Albert J.	July 19, 1965	Oct. 26, 1974	Louisiana
43	Motter, David C.	July 1, 1966	Sept. 20, 1981	Ohio
44	Gwin, John D.	Feb. 21, 1967	Dec. 31, 1974	Mississippi
45	Howland, W.A., Jr.	July 5, 1973	Mar. 27, 1978	Georgia
46	Mullin, Robert A.	July 5, 1973	Sept. 8, 1978	Kansas
47	Ream, Joseph M.	Feb. 2, 1975	June 30, 1978	Pennsylvania
48	Bloom, Robert	Aug. 31, 1975	Feb. 28, 1978	New York
49	Chotard, Richard D.	Aug. 31, 1975	Nov. 25, 1977	Missouri
50	Hall, Charles B.	Aug. 31, 1975	Sept. 14, 1979	Pennsylvania

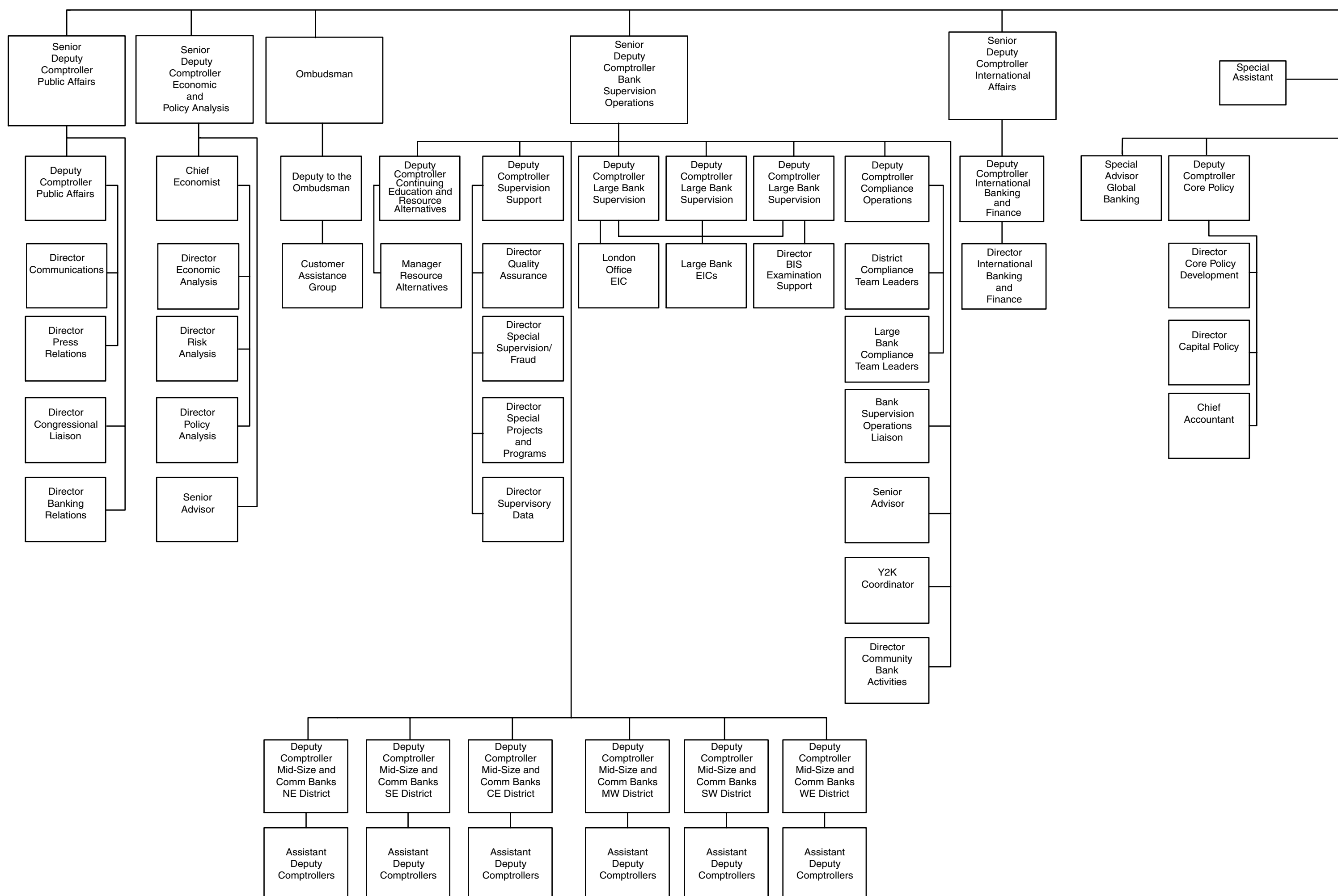
Table 2—Senior Deputy and Deputy Comptrollers of the Currency, 1863 to the present (continued)

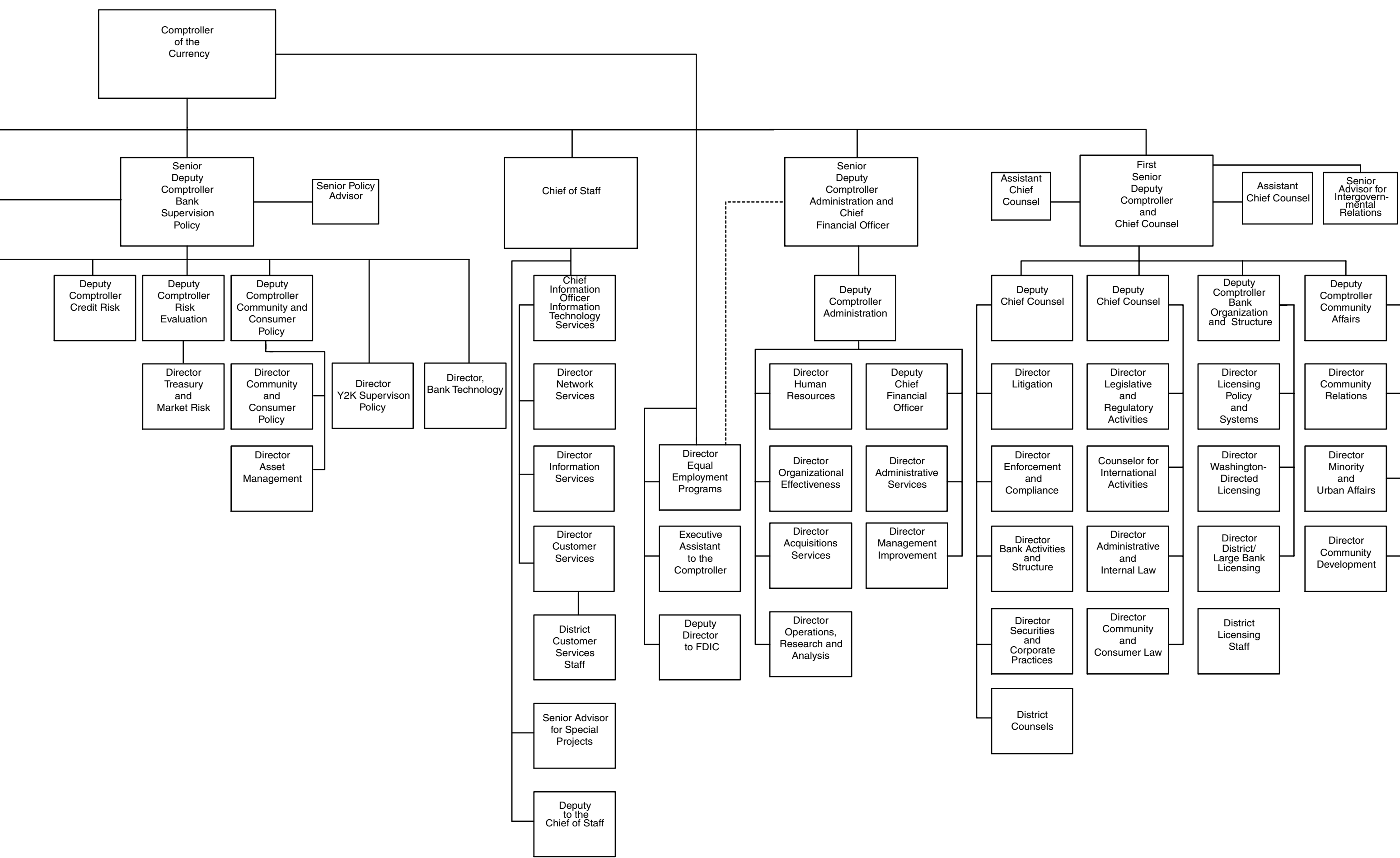
No.	Name	Dates of tenure		State
51	Jones, David H.	Aug. 31, 1975	Sept. 20, 1976	Texas
52	Murphy, C. Westbrook	Aug. 31, 1975	Dec. 30, 1977	Maryland
53	Selby, H. Joe	Aug. 31, 1975	Mar. 15, 1986	Texas
54	Homan, Paul W.	Mar. 27, 1978	Jan. 21, 1983	Nebraska
55	Keefe, James T.	Mar. 27, 1978	Sept. 18, 1981	Massachusetts
56	Muckenfuss, Cantwell F., III	Mar. 27, 1978	Oct. 1, 1981	Alabama
57	Wood, Billy C.	Nov. 7, 1978	Jan. 16, 1988	Texas
58	Longbrake, William A.	Nov. 8, 1978	July 9, 1982	Wisconsin
59	Odom, Lewis G., Jr.	Mar. 21, 1979	Nov. 16, 1980	Alabama
60	Martin, William E.	May 22, 1979	Apr. 4, 1983	Texas
61	Barefoot, Jo Ann	July 13, 1979	Sept. 5, 1982	Connecticut
62	Downey, John	Aug. 10, 1980	Aug. 2, 1986	Massachusetts
63	Lord, Charles E.	Apr. 13, 1981	Mar. 31, 1982	Connecticut
64	Bench, Robert R.	Mar. 21, 1982	Sept. 25, 1987	Massachusetts
65	Klinzing, Robert R.	Mar. 21, 1982	Aug. 21, 1983	Connecticut
66	Robertson, William L.	Mar. 21, 1982	Sept. 26, 1986	Texas
67	Arnold, Doyle L.	May 2, 1982	May 12, 1984	California
68	Weiss, Steven J.	May 2, 1982	—	Pennsylvania
69	Stephens, Martha B.	June 1, 1982	Jan. 19, 1985	Georgia
70	Stirnweis, Craig M.	Sept. 19, 1982	May 1, 1986	Idaho
71	Hermann, Robert J.	Jan. 1, 1983	May 3, 1995	Illinois
72	Mancusi, Michael A.	Jan. 1, 1983	Feb. 17, 1986	Maryland
73	Marriott, Dean S.	Jan. 1, 1983	Jan. 3, 1997	Missouri
74	Poole, Clifton A., Jr.	Jan. 1, 1983	Oct. 3, 1994	North Carolina
75	Taylor, Thomas W.	Jan. 1, 1983	Jan. 16, 1990	Ohio
76	Boland, James E., Jr.	Feb. 7, 1983	Feb. 15, 1985	Pennsylvania
77	Fisher, Jerry	Apr. 17, 1983	Apr. 4, 1992	Delaware
78	Patriarca, Michael	July 10, 1983	Aug. 15, 1986	California
79	Wilson, Karen J.	July 17, 1983	July 3, 1997	New Jersey
80	Winstead, Bobby B.	Mar. 18, 1984	June 11, 1991	Texas
81	Chew, David L.	May 2, 1984	Feb. 2, 1985	District of Columbia
82	Walter, Judith A.	Apr. 24, 1985	Dec. 30, 1997	Indiana
83	Maguire, Francis E., Jr.	Jan. 9, 1986	Aug. 6, 1996	Virginia
84	Kraft, Peter C.	July 20, 1986	Sept. 15, 1991	California
85	Klinzing, Robert R.	Aug. 11, 1986	July 7, 1997	Connecticut
86	Hechinger, Deborah S.	Aug. 31, 1986	Sept. 14, 1987	District of Columbia
87	Norton, Gary W.	Sept. 3, 1986	Jan. 2, 1999	Missouri
88	Shepherd, J. Michael	Jan. 9, 1987	May 3, 1991	California
89	Rushton, Emory Wayne	Jan. 21, 1987	Sept. 20, 1989	Georgia
90	Fiechter, Jonathan	Mar. 4, 1987	Oct. 30, 1987	Pennsylvania
91	Stolte, William J.	Mar. 11, 1987	Mar. 21, 1992	New Jersey
92	Clock, Edwin H.	Feb. 29, 1988	Jan. 3, 1990	California
93	Krause, Susan F.	Mar. 30, 1988	Oct. 18, 1999	California
94	Coonley, Donald G.	June 29, 1988	May 31, 1996	Virginia
95	Blakely, Kevin M.	Oct. 12, 1988	Sept. 27, 1990	Illinois
96	Steinbrink, Stephen R.	Apr. 8, 1990	May 3, 1996	Nebraska
97	Lindhart, Ronald A.	Apr. 22, 1990	July 27, 1991	Florida
98	Hartzell, Jon K.	July 29, 1990	Dec. 5, 1995	California
99	Cross, Leonora S.	Nov. 4, 1990	Mar. 31, 1998	Utah
100	Finke, Fred D.	Nov. 4, 1990	—	Nebraska

Table 2—Senior Deputy and Deputy Comptrollers of the Currency, 1863 to the present (continued)

No.	Name	Dates of tenure		State
101	Kamihachi, James D.	Nov. 6, 1990	—	Washington
102	Barton, Jimmy F.	July 14, 1991	May 1, 1994	Texas
103	Cross, Stephen M.	July 28, 1991	June 4, 1999	Virginia
104	Guerrina, Allan B.	Apr. 19, 1992	June 23, 1996	Virginia
105	Powers, John R.	Aug. 9, 1992	July 2, 1994	Illinois
106	Alt, Konrad S.	Sept. 5, 1993	Oct. 4, 1996	California
107	Harris, Douglas E.	May 20, 1994	June 21, 1996	New York
108	Williams, Julie L.	July 24, 1994	—	District of Columbia
109	Sharpe, Ralph E.	Oct. 30, 1994	July 6, 1997	Virginia
110	Jee, Delora Ng	May 28, 1995	—	California
111	Britton, Leann G.	Jan. 7, 1996	—	Minnesota
112	Golden, Samuel P.	Mar. 31, 1996	—	Texas
113	Abbott, John M.	Apr. 1, 1996	—	Texas
114	Healey, Barbara C.	June 9, 1996	Jan. 3, 1998	New Jersey
115	Calhoun, Scott G.	Sept. 29, 1996	Aug. 30, 1997	New York
116	Roberts, Matthew	Oct. 7, 1996	Oct. 18, 1997	District of Columbia
117	Nebhut, David H.	Oct. 27, 1996	Apr. 26, 1998	Pennsylvania
118	Rushton, Emory Wayne	May 5, 1997	—	Georgia
119	Reid, Leonard F., Jr.	May 19, 1997	Feb. 15, 1998	District of Columbia
120	Robinson, John F.	June 1, 1997	—	Missouri
121	Bodnar, John A.	July 6, 1997	—	New Jersey
122	Bransford, Archie L., Jr.	July 6, 1997	—	Michigan
123	Gibbons, David D.	July 6, 1997	—	New York
124	Gilland, Jerilyn	July 6, 1997	—	Texas
125	Jaedicke, Ann F.	July 6, 1997	—	Texas
126	Long, Timothy W.	July 6, 1997	—	North Dakota
127	Nishan, Mark A.	July 6, 1997	—	New York
128	Otto, Bert A.	July 6, 1997	—	Indiana
129	Roeder, Douglas W.	July 6, 1997	—	Indiana
130	Yohai, Steven M.	Feb. 17, 1998	—	New York
131	Finister, William	Mar. 1, 1998	—	Louisiana
132	Hanley, Edward J.	Mar. 1, 1998	—	New York
133	Brosnan, Michael L.	Apr. 26, 1998	—	Florida
134	Brown, Jeffrey A.	June 7, 1998	Aug. 2, 1998	Iowa
135	Hammaker, David G.	June 7, 1998	—	Pennsylvania
136	McCue, Mary M.	July 20, 1998	Apr. 9, 1999	New Jersey
137	Sharpe, Ralph E.	Jan. 3, 1999	—	Michigan
138	Engel, Jeanne K.	Mar. 29, 1999	—	New Jersey
139	Wilcox, James A.	June 7, 1999	—	New York
140	Kelly, Jennifer C.	Nov. 22, 1999	—	New York

Figure 1 - Office of the Comptroller of the Currency





December 1999

Recent Corporate Decisions

The OCC publishes monthly, in its publication *Interpretations and Actions*, corporate decisions that represent a new or changed policy, or present issues of general interest to the public or the banking industry. In addition, summaries of selected corporate decisions appear in each issue of the *Quarterly Journal*. In the third quarter of 1999, the following corporate decisions were of particular importance because they were precedent-setting or otherwise represented issues of importance. If the summary includes a decision or approval number, the OCC's decision document may be found in *Interpretations and Actions*. For decisions that have not been published yet, the summary includes the application control number which should be referenced in inquiries to the OCC regarding the decision.

Charters

On July 9, 1999, the OCC granted preliminary conditional approval to a proposal by Canadian Imperial Bank of Commerce, Toronto, Ontario, Canada, to charter a national bank titled CIBC National Bank, Maitland, Florida. The bank will deliver retail products and services through electronic channels such as telephone and the Internet, and will establish in-store banking kiosks on the premises of retail stores with which it has a joint marketing agreement. This program is based upon an existing program offered by CIBC in Canada known as *President's Choice Financial*. Initially, the bank will establish kiosks in Winn-Dixie Stores in Florida under the brand *MarketPlace Bank*. Approval was granted subject to certain pre-opening requirements and ongoing conditions addressing capital, technology, and Internet security matters. [Conditional Approval No. 313]

On July 30, 1999, the OCC granted preliminary approval for Popular Inc. to establish a bank in Orlando, Florida, with the title of Banco Popular, National Association. In addition, the OCC granted approval for Banco Popular, National Association, to purchase certain assets and assume certain liabilities of the Culebra Branch of Banco Popular de Puerto Rico, San Juan, Puerto Rico. Banco Popular also applied to the Federal Reserve Board to establish a branch in Culebra, Puerto Rico, and for the bank to acquire, as an Agreement Corporation, an insurance agency in Culebra to conduct 12 USC 92 insurance agency activities. [Corporate Decision No. 99–22]

Mergers

On July 23, 1999, the OCC granted approval for Firstar Bank, NA, Cincinnati, Ohio, to merge with eight Mercantile Corporation bank subsidiaries. While the OCC did not receive any direct protests on the application, the OCC investigated the concerns received by the Federal Reserve Bank of Chicago in connection with the holding company merger application. The OCC's investigation and analysis of the issues raised indicated no basis for denying or conditionally approving the application. The OCC's approval letter addresses the issues. [Corporate Decision No. 99–31]

On August 11, 1999, the OCC granted approval for KeyBank Interim National Bank of Michigan, Ann Arbor, Michigan, to purchase and assume the Indiana and Michigan branch offices of KeyBank, National Association, Cleveland, Ohio, pursuant to 12 USC 24(Seventh), 36(c), 36(d), 1828 (c) and 1831u. Also, on August 11, 1999, the OCC granted approval to KeyBank Interim National Bank of Michigan, Ann Arbor, Michigan, to merge with and into KeyBank, National Association, Cleveland, Ohio, pursuant to 12 USC 215a–1, 36(d), 1828 (c) and 1831u. The resulting bank was authorized to retain and operate the offices of the merging banks under 12 USC 36(d) and 1831u(d)(1). [Corporate Decision No. 99–24]

On September 13, 1999, the OCC granted approval to AMCORE Financial Inc., Rockford, Illinois, to merge nine affiliated bank and thrift subsidiaries located in Illinois and Wisconsin into AMCORE Bank National Association, Rockford, Illinois. The resulting national bank will have branches in Illinois and Wisconsin. [Corporate Decision 99–28]

Branches

On July 1, 1999, the OCC granted approval for First National Bank, Pierre, South Dakota, to establish a mobile branch. The mobile branch will perform various banking services at two nursing homes in Pierre. If the bank desires to operate the mobile branch at additional locations, it must file a new branch application and publish notice indicating that the application will extend the previous branch approval to the specific additional locations. [Corporate Decision No. 99–16]

On July 28, 1999, relying upon the *Deposit Guaranty* precedent, the OCC granted approval to five applications by four national banks to establish *de novo* branches in Oklahoma. The national bank applicants were Bank of Oklahoma, Tulsa, Oklahoma; InterBank, N.A., Elk City, Oklahoma; First National Bank of Weatherford, Weatherford, Oklahoma; and First Fidelity Bank, N.A., Oklahoma City, Oklahoma. The OCC's decision followed the July 1, 1999 expiration of an Oklahoma statute imposing branching restrictions on state-chartered savings and loan associations, or thrifts. Three banks protested the proposed branches arguing that *Deposit Guaranty* did not apply. [Corporate Decision No. 99–20]

Operating Subsidiaries

On July 19, 1999, the OCC granted conditional approval for First Tennessee, National Association, Memphis, Tennessee, to establish two operating subsidiaries and make one direct investment in a joint venture for the purpose of holding a 50 percent, noncontrolling interest in a limited partnership that engages in real estate tax reporting services. Approval was granted subject to the OCC's standard conditions for noncontrolling investments by national banks. [Conditional Approval No. 317]

On July 21, 1999, the OCC granted conditional approval for National Bank of Commerce of Birmingham, Birmingham, Alabama, to participate through an operating subsidiary in a joint venture that will originate, process, service, and sell residential mortgages. Approval was granted subject to the OCC's standard conditions for noncontrolling investments by national banks. [Conditional Approval No. 318]

On July 30, 1999, the OCC granted conditional approval for PNC Bank, National Association, Pittsburgh, Pennsylvania, to expand the activities of an existing operating subsidiary and thereby make a noncontrolling investment in a Delaware limited liability company (LLC). The LLC's activities include title insurance agency and closing management services primarily to the bank. Approval was granted subject to the OCC's standard conditions for noncontrolling investments by national banks. [Application Control No. 1999–NE–08–0028]

On July 30, 1999, the OCC granted conditional approval for First Union National Bank, Charlotte, North Carolina, to make, through an existing operating subsidiary, a 50 percent, noncontrolling equity investment in a limited liability company (LLC). The LLC will engage in title insurance agency, real estate appraisal, loan closing, and other real estate loan-related and finder activities. Approval was granted subject to the OCC's standard conditions for noncontrolling investments by national banks. [Conditional Approval No. 322]

On August 17, 1999, the OCC granted conditional approval for The First National Bank of Chicago, Chicago, Illinois, and Mercantile Bank National Association, St. Louis, Missouri (collectively the "banks") to establish operating subsidiaries to own noncontrolling interests in a limited liability company (LLC) that engages in various cash management, electronic payment, and data processing services. The banks will transfer their existing interests in the LLC to the operating subsidiaries. Approval was granted subject to the OCC's standard conditions for noncontrolling investments by national banks. [Conditional Approval No. 324]

On September 14, 1999, the OCC granted conditional approval for LA Bank, National Association, Lake Ariel, Pennsylvania, to expand the activities of an existing operating subsidiary and thereby make a minority, noncontrolling investment in a Pennsylvania limited liability company (LLC). The LLC's activities include title insurance agency and closing management services primarily to the bank. Approval was granted subject to the OCC's standard conditions for noncontrolling investments by national banks. [Conditional Approval No. 327]

Insurance Subsidiaries

On July 28, 1999, the OCC granted conditional approval for National Bank of Commerce of Mississippi, Starkville, Mississippi, to establish an operating subsidiary for the purpose of acquiring two insurance agencies. The condition requires the bank to establish the legal permissibility of the subsidiary's activities, or restructure its activities to bring them into conformance with national banking law, within two years from the date it acquires the insurance agencies. [Conditional Approval No. 320]

On September 2, 1999, the OCC granted approval for Citibank, National Association, New York, New York, to establish an operating subsidiary to reinsure a portion of the mortgage insurance on loans serviced, originated, or purchased by the bank, the bank's mortgage company subsidiaries, and affiliates of the bank. Under the bank's reinsurance proposal, the subsidiary's reinsurance obligations will take the form of an "excess loss" arrangement. [Corporate Decision No. 99–26]

On September 20, 1999, the OCC granted approval for Chase Manhattan Bank USA, National Association, Wilmington, Delaware, to expand the activities of its mortgage reinsurance operating subsidiary to include reinsuring a portion of the mortgage insurance on loans serviced

by the bank or the bank's lending affiliates. Under the bank's reinsurance proposal, the subsidiary's reinsurance obligations will take the form of either an "excess loss" or "quota share" arrangement. [Corporate Decision No. 99–32]

Reverse Stock Splits

On August 10, 1999, the OCC granted conditional approval to Merchants Bank of California, National Association, Carson, California to elect the corporate governance provisions of California law, and to complete a reverse stock split in accordance with those provisions. The bank will provide dissenters' rights in accordance with state law and the conditions of approval. [Conditional Approval No. 323]

On September 21, 1999, the OCC granted conditional approval for West Michigan National Bank and Trust, Frankfort, Michigan, to elect the corporate governance provisions of Michigan law and complete a reverse stock split in accordance with those provisions. The bank will provide dissenters' rights in accordance with state law and the conditions of approval. [Conditional Approval No. 329]

Community Reinvestment Act Decisions

On August 17, 1999, the OCC granted conditional approval for Marquette National Bank, Chicago, Illinois, to establish two branches. In January 1998, the OCC assigned Marquette National Bank a CRA rating of "needs to improve." After reviewing the bank's progress in addressing its CRA weaknesses, the OCC determined that the imposition of enforceable conditions and a pre-opening requirement were appropriate and consistent with the Community Reinvestment Act and OCC policies thereunder. [CRA Decision No. 98]

On May 8, 1999, the OCC denied a branch relocation application from United National Bank, Monterey Park, California, since the bank had not adequately addressed its "needs to improve" CRA rating. The bank refiled the application after it had adopted a CRA plan acceptable to the OCC and had made improvements in its performance. On August 24, 1999, the OCC approved the relocation application but restricted the relocation so that it could not occur until the OCC conducts a Community Reinvestment Act examination of the bank, and the bank receives at least a "satisfactory" rating in the published public evaluation. [For May 8, 1999 decision, see CRA Decision No. 97; for August 24, 1999 decision, see CRA Decision No. 99]

Special Supervision/Fraud and Enforcement Activities

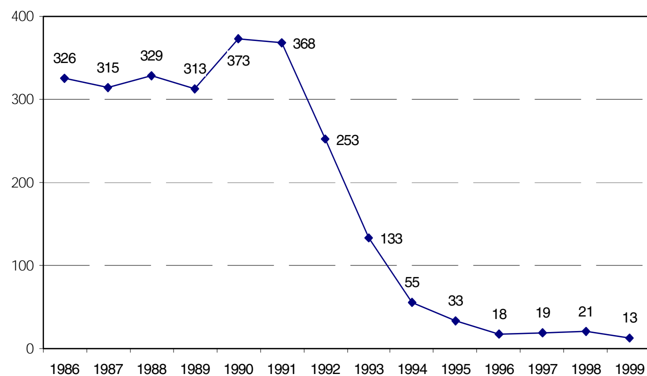
The Special Supervision/Fraud division of the Bank Supervision Operations department supervises the resolution of critical problem banks through rehabilitation or orderly failure management, monitors the supervision of delegated problem banks, coordinates fraud/white collar crime examinations, provides training, disseminates information, and supports OCC supervisory objectives as an advisor and liaison to OCC management and field staff on emerging problem bank and fraud/white collar crime related issues. Fraud experts are located in each district office, in the large bank division and the OCC's Washington office.

This section includes information on problem national banks, national bank failures, and enforcement actions. Data on problem banks and bank failures is provided by the OCC's Special Supervision/Fraud division in Washington. Information on enforcement actions is provided by the Enforcement and Compliance division of the OCC's law department. The latter is principally responsible for presenting and litigating administrative actions on the OCC's behalf against banks requiring special supervision.

Problem National Banks and National Bank Failures

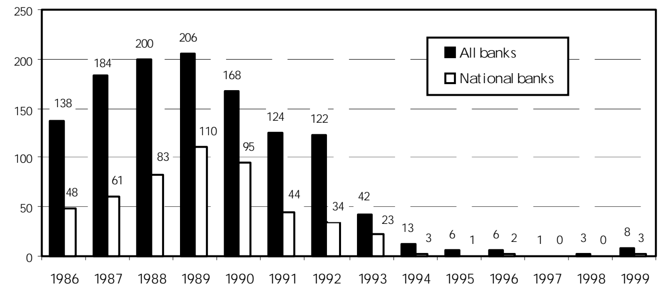
Problem banks represented less than 1 percent of the national bank population at December 31, 1999. The volume of problem banks, those with a CAMELS 4 or 5, has been stable for several years. The CAMELS rating is the composite bank rating based on examiner assessment of capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. The total number of problem banks decreased to 13 at December 31, 1999. This low volume of problem banks reflects the stable economy in 1999 and generally favorable economic conditions.

Figure 1—Problem national bank historical trend line



Source: Special Supervision. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 2—Bank failures



Source: OCC Supervisory Monitoring System (SMS) data. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

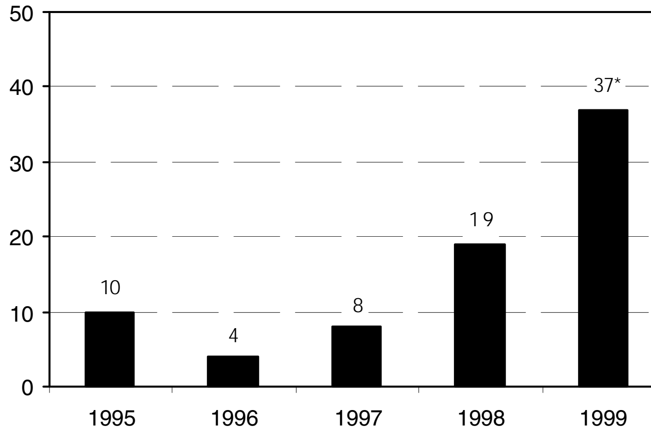
Although the volume of problem banks is stable, an increase or deteriorating trend is noted in the number of 3-rated banks. The number of banks that are 3-rated for year-end 1999 continues to trend upward and almost doubled the number reported in 1996. There were also three national bank failures during 1999 out of the eight commercial banks failures. These were the first national bank failures since 1996, when two national banks failed.

Enforcement Actions

The OCC has a number of remedies with which to carry out its supervisory responsibilities. When it identifies safety and soundness or compliance problems, these remedies range from advice and moral suasion to informal and formal enforcement actions. These mechanisms are designed to achieve expeditious corrective and remedial action to return the bank to a safe and sound condition.

The OCC takes enforcement actions against national banks, individuals associated with national banks, and servicing companies that provide data processing and other services to national banks. The OCC's informal enforcement actions against banks include commitment letters and memorandums of understanding (MOUs). Informal enforcement actions are

Figure 3—Commitment letters



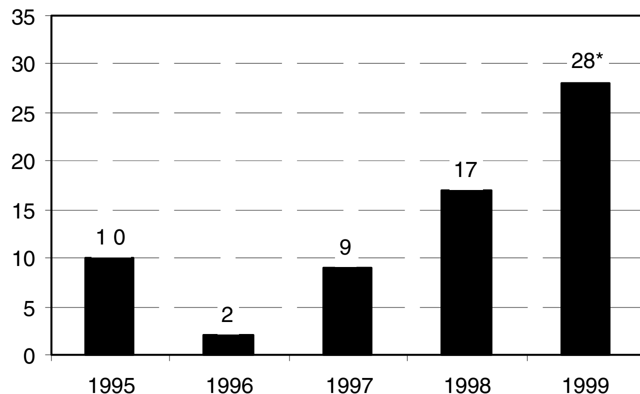
Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*6 of which are for year-2000 problems

meant to handle less serious supervisory problems identified by the OCC in its supervision of national banks. Failure to honor informal enforcement actions will provide strong evidence of the need for the OCC to take formal enforcement action. The charts below show total numbers of the various types of enforcement actions completed by the OCC in the last several years.

In 1999, the OCC continued to take a substantial number of enforcement actions against institutions under its supervision. Many of these actions were designed to ensure that national banks and service providers properly prepare their computer systems for the year-2000 conversion. The charts indicate how many of the enforcement actions in 1999 were for year-2000 problems.

Figure 4—Memorandums of understanding

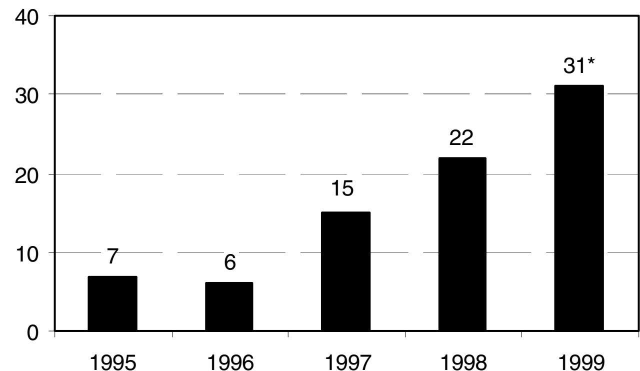


Source SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*6 of which are year-2000 problems

In addition to traditional informal actions, the OCC also issued supervisory directives to national banks with material deficiencies in their preparation for the year-2000 conversion of their deficiencies. Supervisory directives summarize the deficiencies and the OCC's expectations of how the banks need to address them. The OCC issued 45 supervisory directives for year-2000 problems in 1999, down from a total of 330 for 1998. The large drop in supervisory directives is attributable to two factors. First, the industry attained a high level of compliance with year-2000 guidelines. Second, for those few banks that lagged behind, the OCC relied more on the Part 30 Safety and Soundness Order process in 1999 to insure quicker responses by those banks.

Figure 5—Formal agreements

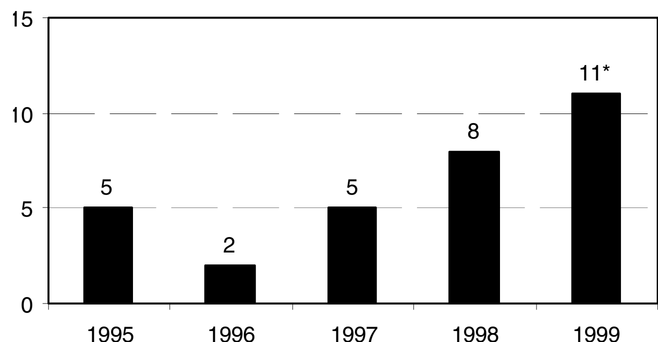


Source SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

* 2 of which are for year-2000 problems

The most common types offormal enforcement actions issued by the OCC against banks over the past several years have been formal agreements and cease-and-desist orders. Formal agreements are documents signed by a national bank's board of directors and the OCC in which specific corrective and remedial measures are enumerated

Figure 6—Cease-and-desist orders against banks



Source SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

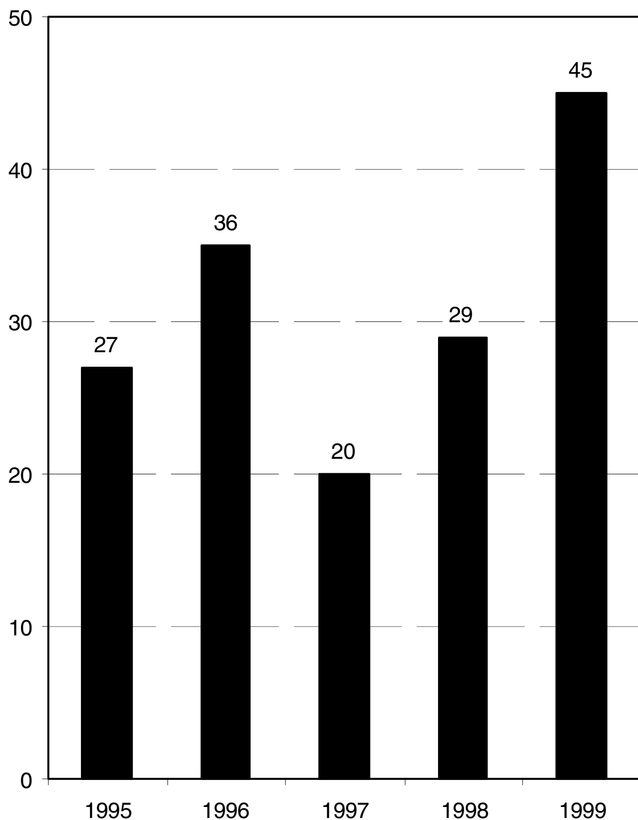
*1 of which is for year-2000 problems

as necessary to return the bank to a safe and sound condition. Cease-and-desist orders (C&Ds), sometimes issued as consent orders, are similar in content to formal agreements but may be enforced either through assessment of civil money penalties (CMPs) or by an action for injunctive relief in federal district court. The OCC also issued two CMPs against national banks in 1999.

The OCC also continued to rely on the safety and soundness order process in its year-2000 enforcement efforts. In 1999, the OCC issued 69 notices of deficiency (out of 75 total) for year-2000 problems, which notified the affected banks that they needed to submit a plan for bringing their computer systems into compliance or possibly face a safety and soundness order requiring them to do so. During 1999, 73 national banks submitted acceptable safety and soundness plans. The OCC issued one safety and soundness order in 1999, for year-2000 problems.

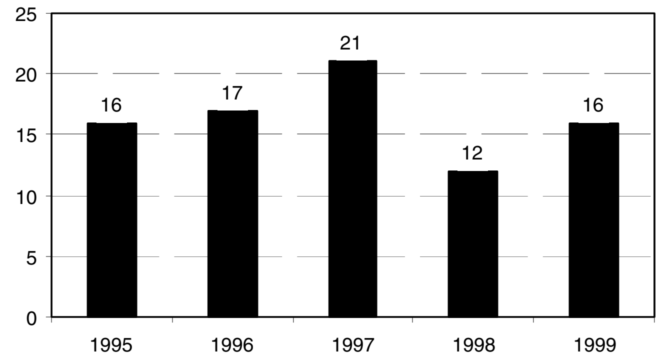
The most common enforcement actions against individuals are CMPs, personal C&Ds, and removal and prohibition orders. CMPs are authorized for violations of laws,rules, regulations, formal written agreements, final orders, conditions imposed in writing, and, under certain circumstances, unsafe or unsound banking practices and breaches of fiduciary duty. Personal C&Ds may be used to restrict individuals' activities and to order payment of restitution. Removal and prohibition actions, which are used in the most serious cases, result in lifetime bans from the banking industry.

Figure 7—Civil money penalties against individuals



Source SMS*. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 8—Cease-and-desist orders against individuals



Source SMS*. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

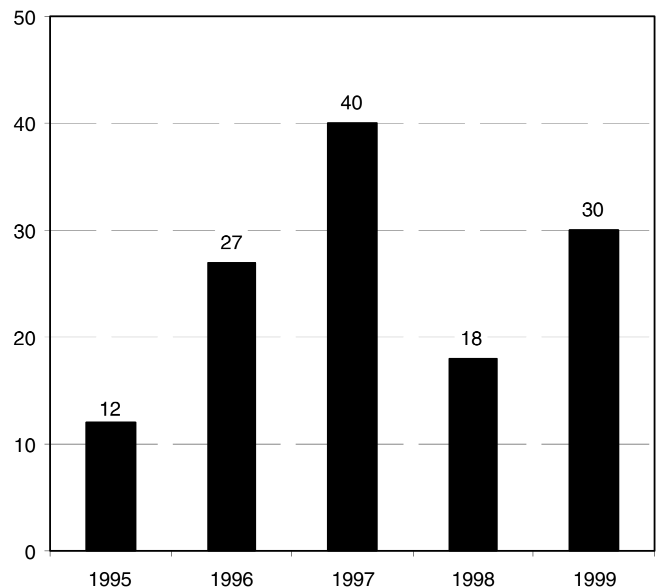
In 1999, the OCC joined with other banking regulators in taking enforcement actions against service providers. These actions are described in the next section.

Recent Enforcement Cases

Consent Orders and Formal Agreements

In March 1999, a former director who was previously prohibited from banking due to a conviction for money laundering, consented to a cease-and-desist order based on

Figure 9—Removal and prohibition orders



Source SMS*. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Change in Bank Control Act (CBCA) violations. The OCC determined that the former director controlled, through various family members, over 25 percent of the bank's stock without filing the appropriate notice with the OCC. Additionally, the former director concealed his ownership from the bank and the OCC in order to avoid filing a notice of a change in bank control as required by the CBCA. The consent order required him to divest the shares held in violation of the CBCA and to forfeit all gains associated with the ownership and the sale of the shares and to pay a civil money penalty.

In August 1999, the OCC filed a notice of charges alleging, among other things, that the former chairman of the board of a national bank in Oklahoma made numerous loans to approximately 15 different individuals and entities that used the proceeds to invest in oil and gas ventures operated and/or drilled by the respondent's companies. The former chairman consented to pay restitution in the amount of $200,000 and a civil money penalty in the amount of $50,000 and agreed to be prohibited from participating in the affairs of any federally insured depository institution.

In August 1999, the OCC, FDIC, OTS, and NCUA jointly entered into a formal agreement with a data service provider, to require it to complete testing of its data processing systems for year-2000 compliance. The agreement, like those previously entered into with other service providers, required the company to submit a plan under which it would complete its testing and implementation by a date certain. In addition, the company was required to complete its contingency planning by a date certain. As with the other servicer agreements, the company agreed to release its customer financial institutions from their contracts if it was unable to meet the deadlines in the formal agreement.

In August 1999, the former president and director and his wife (also a director) of a Wisconsin national bank consented to restitution of $3,988,115 and a civil money penalty of $1,000,000, which was waived, for violations of law, unsafe and unsound banking practices, and breaches of their fiduciary duty to the bank. Specifically, the OCC charged the couple with diverting funds from the bank to pay for their own personal expenses, including luxury boats and a diamond ring. Most of the expenses were disguised as expenses for a new bank building. The respondents were subsequently convicted on criminal charges in connection with these transactions. In addition, the bank's senior lending officer consented to a prohibition, restitution of $170,000 and a civil money penalty of $75,000 for violations of law, unsafe and unsound banking practices, and breaches of his fiduciary duty to the bank. He had caused significant lending limit violations, caused the bank to enter into a real estate leasing contract with him at an unreasonable rate, and had knowingly benefited from fraud engaged in by other individuals at the bank. Finally, another bank director consented to a prohibition and a civil money penalty of $75,000. He had attempted to obstruct an OCC examination by hiding bank documents in the insulation of the attic of the bank and had knowingly facilitated the fraud engaged in by other individuals at the bank.

In August 1999, a community bank in Ohio consented to a cease-and-desist order requiring the bank to increase its capital and correct several unsafe and unsound practices. A March 1999 examination identified a major violation of the bank's legal lending limit and resulting loan losses of approximately $16.5 million. The violation arose from the combination of loans to individual retail customers of a commercial borrower at the bank and commercial loans made directly to the commercial borrower. The losses caused the bank to need a substantial capital injection. In addition, other deficiencies at the bank contributed to the bank's failure to discover the violation and recognize the resulting losses in a timely manner. These deficiencies included ineffective audit and loan review, poor credit administration and underwriting, and weak board oversight and supervision.

In September and November 1999, the OCC reached settlements with the former president, the former chairman, and a former director of a community bank in Texas. Following an extensive investigation, the OCC initiated prohibition, restitution ($3.6 million), and civil money penalty ($750,000) actions against the insiders for engaging in unsafe and unsound banking practices and self-dealing. The OCC successfully defended a judicial challenge to the issuance of a temporary cease-and-desist order against the former chairman that sought to preserve his assets during the pendency of the administrative proceeding. In September 1999, the former director consented to a personal cease-and-desist order and payment of a $50,000 civil money penalty. Shortly before the hearing, the two remaining respondents consented to prohibitions from the banking industry, restitution orders totaling $1,000,000, and civil money penalties totaling $200,000.

In September 1999, two attorneys agreed to temporary suspensions from practicing before the OCC and the other federal banking agencies. The OCC brought actions against the two attorneys pursuant to Subpart K, 12 CFR Part 19, and alleged that when the attorneys appeared before the OCC in the underlying matter, they engaged in disreputable conduct pursuant to 12 CFR 19.196 by knowingly giving or participating in giving materially false or misleading information to the OCC and making statements with reckless disregard for their truthfulness. The OCC also alleged that the respondents incompetently represented the interests of the national bank in a significant matter before the OCC, within the meaning of

12 CFR 19.195. The attorney who was the primary attorney on the matter consented to a one-year suspension from practice before the federal banking agencies, and the second attorney consented to a six-month suspension.

In October 1999, the OCC commenced prohibition actions against two individuals at a community bank in Texas. One served as a director and was the largest stockholder and the other was the former chairman and president of the bank. Together, the respondents issued bank certificates of deposit as part of a scheme to fraudulently inflate the capitalization of an insurance company partly owned by the director. The State of Louisiana brought suit against the bank for losses suffered from the subsequent failure and liquidation of the insurance company. The respondents also directed the bank to make numerous loans to the director and his related interests, in violation of 12 USC 84 and 371c, and 12 CFR 215, and resulting in significant loss. In its action against the two, the OCC also sought orders requiring the two to reimburse the bank for any losses it suffers as a result of a Louisiana law suit. In November 1999, the former chairman and president consented to the prohibition and reimbursement order. The case was still proceeding against the director at year's end.

In November 1999, the former president and director of a community bank in Ohio consented to a prohibition order from the banking industry. From 1995 to 1996, the former president originated fictitious loans in the names of bank customers without their knowledge or consent and deposited the loan proceeds into his own deposit accounts. The president resigned when the bank discovered the fictitious loans. In March 1998, the bank charged off $385,000 in losses from the fictitious loans. These losses, along with others recognized shortly thereafter, caused the bank to became critically under-capitalized and it only narrowly averted failure.

Federal Court Decision

On July 20, 1999, the OCC obtained a judgment on behalf of the FDIC in the amount of $197,500, with interest, in the U.S. District Court for the Northern District of Texas, against Gerald W. Berry, former director, First National Bank of Panhandle, Panhandle, Texas. In December 1996, Mr. Berry consented to make restitution in the amount of $200,000 to the FDIC for losses suffered by the bank resulting from his origination of loans without prior board approval, misrepresentation of loan purposes, collateral values, and borrower financial statements while serving as a loan officer of the bank. The losses suffered by the bank as a result of Berry's activities led to its insolvency in June 1996.

Fast Track Enforcement Cases

The OCC continued its Fast Track Enforcement Program, initiated in 1996, which ensures that bank insiders who have engaged in criminal acts in banks, but who are not being criminally prosecuted, are prohibited from working in the banking industry. As part of the Fast Track Enforcement Program, E&C secured 21 consent prohibition orders against institution-affiliated parties in 1999. Some of these orders also incorporated restitution payments to the appropriate banks for losses incurred. In addition, the OCC's Enforcement and Compliance division sent out 128 notifications to former bank employees who were convicted of crimes that federal law prohibits them from working again in a federally insured depository institution.

Appeals Process

Appeal 1—Appeal of "Needs to Improve" CRA Rating

Background

A community bank appealed its Community Reinvestment Act (CRA) rating of "needs to improve" assigned by the supervisory office. The Performance Evaluation (PE) stated that the bank's lending performance was in need of improvement, and that the loan-to-deposit (LTD) ratio was less than reasonable, given the bank's size, financial condition, capacity to lend, and assessment area credit needs. It also stated that the public was not aware of the loan products offered by the bank, bank management had a reputation for conservative lending practices, and the community perception was that submitting a loan application would be futile.

The appeal focused on the LTD ratio component of the CRA evaluation process. The bank believed the LTD ratio was reasonable given the demographics, economic factors, and limited lending opportunities in the area.

Discussion

The CRA regulation performance standards' criteria for evaluating a small bank's record of helping to meet the credit needs of its community include an evaluation of the bank's LTD ratio adjusted for seasonal variations and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments. The reasonableness of the ratio is assessed considering the performance context in which the bank operates including its size, financial condition, and assessment area credit needs. This ratio is one indicator of a bank's ability and willingness to help meet the assessment area's credit needs.

The OCC recognizes that every bank is unique in its own right and evaluates each bank's CRA performance based on the context in which it operates. In reviewing the bank's performance in their assessment area, the ombudsman considered the following factors:

- The bank's LTD ratio during the examination was 32 percent with an average of 26 percent since the last examination, two years ago. The bank's deposit base included a significantly high level of deposit accounts from public funds, insider relationships, and other large depositors. Depositors with certificate-of-deposit balances of $28,000,000 have only $2,600,000 in loans outstanding. It is also important to note that of the $20,000,000 in demand deposit accounts, $9.5MM or 89 accounts have balances over $50,000, with an average deposit balance of $106,000. These large depositors contributed to the bank's relatively low LTD ratio.
- The community is heavily banked, with one financial institution for every 800 residents.
- The largest sector of the assessment area is upper-income families; however, in general, the population is declining. In addition, there are no low- and moderate-income census tracts in the assessment area.
- When considering the number of financial institutions in the assessment area and the significant level of lending to low- and moderate-income borrowers, additional lending opportunities to this segment of the population is limited.

Conclusion

The performance context under which this bank operates is unique. It includes:

- A high level of deposit accounts from public funds, insider relationships, and other large depositors with low level of loan demand;
- The community is heavily banked with one financial institution for every 800 residents;
- A high level of upper-income individuals within the assessment area;
- A declining population;
- No low- and moderate-income census tracts;

Therefore, considering the above factors the ombudsman opined that the bank's loan-to-deposit ratio was reasonable. In determining the appropriate overall CRA rating, the ombudsman also considered the following:

- The bank's loan distribution reflected a very good penetration among borrowers of different income levels. The bank's loan composition level of 32 percent to low and 27 percent to moderate income borrowers exceeded the assessment area's composition percentages of 17 percent and 21 percent, respectively.

- The sample of commercial and agricultural loans reviewed indicated that a substantial majority was extended to entities with annual gross revenues of less than $1 million per year.

Based on the bank's performance context and the small bank performance criteria, the bank's performance under the Community Reinvestment Act was found to be more reflective of a "satisfactory" rating. In accordance with the regulation, the bank is helping to meet the credit needs of the communities in which it operates. A revised PE reflecting this change was forwarded to the bank from the supervisory office.

Appeal 2—Appeal of "Satisfactory" CRA Rating—Lending and Service Tests

Background

A large interstate bank filed a formal appeal concerning its Community Reinvestment Act (CRA) composite rating of "satisfactory record of meeting community credit needs" (satisfactory). Specifically, the bank appealed its lending test and service test ratings in one multi-state MSA and one state rating. The bank requested:

- Rating upgrades for the lending test and service test and the overall rating in the multi-state MSA and one state, which the bank believed would lead to a composite rating of outstanding;
- Inclusion of additional data in the investment test analysis that inadvertently had not been provided to examiners during the CRA examination. Subsequently, the bank requested an expansion of the ombudsman's review to include a reevaluation of the investment test for the multistate MSA, one state rating, and the overall rating; and
- Exclusion of a merged institution's data from the review of the bank's CRA performance due to its recent acquisition. Additionally, the bank asked that the examination scope be amended to include more full-scope reviews of bank assessment areas within the state.

The bank offered four rationales to support its appeal for upgraded ratings. First, it felt that the selection of areas for full-scope evaluation unfairly skewed the results of the examination, due to the recent merger and the additional assessment areas created. It also felt that more assessment areas within the one state should have received full-scope review to provide a more balanced picture of the bank's performance in the state. Second, the bank stated that it had an even higher level of performance in the lending and service areas of community development than it had in the prior period when it was rated outstanding. Third, the bank felt its performance compared favorably to another large bank that had been rated outstanding during the same time period. Lastly, the bank provided additional investments made during the period that were inadvertently not provided to the examiners during the exam.

The bank's composite rating and ratings for the one state and multi-state MSA, in question, were based on the examiner's assignment of the following individual test ratings:

Discussion

Lending Test

In evaluating a bank's lending performance, the OCC considers a bank's:

Rating area	Performance tests and composite ratings			
	Lending test	Investment test	Service test	Composite
Bank	High satisfactory	Low satisfactory	Low satisfactory	Satisfactory
State	High satisfactory	Low satisfactory	Low satisfactory	Satisfactory
Multi-state MSA	High satisfactory	High satisfactory	High satisfactory	Satisfactory

- Number and amount of home mortgage, small business, small farm and consumer loans, if applicable, in the bank's assessment area(s);
- Geographic distribution of home mortgage, small business, small farm and consumer loans, if applicable, within and throughout its assessment area(s), and within low- and moderate-income geographies located in its assessment area(s);
- Distribution of home mortgage, small business, small farm and consumer loans, if applicable, by borrower income level and small businesses and farms of different sizes;
- Community Development lending, including the number and amount of loans, their complexity and innovativeness; and
- Use of innovative or flexible lending practices to address credit needs of low- and moderate-income individuals or geographies.

The ombudsman's analysis of bank and examination prepared work papers and the CRA Performance Evaluation identified that the bank:

1) Did not provide its consumer loans for review as part of the lending test evaluation.
2) Home mortgage and small business lending levels, in terms of number or dollars, had increased since the prior evaluation. However, when the lending volume was compared to demographic data, including the percent of owner-occupied housing units by geography, percent of low- and moderate-income families within the bank's assessment areas, and the number and location of small businesses, the bank's performance was determined to be similar to the prior period.
3) Home mortgage and small business lending performance was mixed throughout the state. In one significant assessment area, the bank demonstrated excellent lending performance. However, performance in the remaining state assessment areas, which represent more of the bank's deposits than the above-mentioned assessment area, was generally adequate to poor.
4) Community development lending within the state was adequate. However, half of the dollar volume of these loans was concentrated within one assessment area.
5) Several flexible home mortgage-lending products had been developed specifically for low- and moderate-income borrowers.
6) Overall home mortgage, small business, and community development lending in the multi-state MSA was considered excellent.

Additionally, the ombudsman concluded that the descriptions of lending performance in the CRA Performance Evaluation were not consistent when describing similar performance among the various rating areas. Consequently, the Performance Evaluation provided a confusing picture of the bank's actual performance.

Investment Test

In evaluating a bank's investment performance, the OCC considers the:

- Dollar amount of qualified investments;
- Innovativeness or complexity of the qualified investments;
- Responsiveness of the qualified investments to credit and community development needs; and,
- Degree to which the qualified investments are not routinely provided by private investors.

The ombudsman's analysis of bank and examination prepared work papers and the CRA Performance Evaluation identified that:

1) Several of the investments the bank provided with its appeal were "qualified investments" and were added to the investment totals.
2) The examiners evaluated the bank's performance using the funded value of the bank's qualified investments rather than the book value. Using the book value increased the total investment dollars in the state and multi-state MSA.
3) The increase in both dollar and number of qualified investments had a positive impact on the investment test rating in the state and bank overall.
4) The qualified investments were responsive to community credit and development needs, but generally did not evidence innovation or complexity and were routinely provided by other private investors.

Service Test

In evaluating a bank's service performance, the OCC considers the:

- Distribution of bank branches among low-, moderate-, middle-, and upper-income geographies.
- Record of opening and closing bank branches, particularly in low- and moderate-income geographies or primarily serving low- and moderate-income individuals;
- Availability and effectiveness of the bank's delivery systems for providing traditional and non-traditional retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals;

- Range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies; and
- Extent to which the bank provides community development services and how innovative and responsive they are to assessment area needs.

The ombudsman's analysis of bank and examination prepared work papers and the CRA Performance Evaluation identified that:

1) Generally, the bank's branch and ATM distribution was commensurate with the percentage of households living within the state assessment areas and the multi-state MSA.
2) The bank had a net increase in branches in low-income geographies within the multi-state MSA.
3) Generally the branch and ATM network was accessible to all portions of the bank's assessment areas.
4) The bank's provision of community development services was significant in the multi-state MSA and adequate overall within the state.
5) A number of community development services provided within the multi-state MSA were not included in the Performance Evaluation.
6) Community contacts and government officials, in the multi-state MSA, indicated that the bank was a community leader and strongly influenced community development, especially in economically depressed areas.

Examination Scope

The ombudsman agreed with the bank that the merged institution's data should not have been included in the evaluation of the bank's performance. Additionally, the examiners should have performed a full-scope review of more state assessment areas to better ascertain the bank's performance. However, the ombudsman concluded that altering the examination scope would not change the bank's state or composite rating.

Comparison of Performance with Other Institutions

The bank provided comparisons of its lending and investment data with that of another large bank. Comparing one bank's raw data to another bank's, without an appropriate context, is difficult and does not necessarily result in being able to conclude that performance is similar or dissimilar. In the ombudsman's review, this bank's lending data was compared to nine other large banks examined during the same time period. The conclusion was that this bank's lending data was not inconsistent with other large banks that received a high satisfactory under the lending test.

Conclusion

Based on the above findings and others contained within the Performance Evaluation, the ombudsman concluded that some of the individual test ratings for the multi-state MSA, the state, and the bank overall should be upgraded.

Additionally, it was concluded that the merged institution's data should remain in the Performance Evaluation. The decision to leave the data in the evaluation was based on the bank having an AA in the applicable state prior to the merger. Accordingly, performance in the state would have to be rated and the inclusion of the merged institution's data did not negatively impact the bank's composite CRA rating.

Changing the examination scope in the state, in question, may have helped develop a better context in which to assess the bank's performance and provided more support for the rating assigned. However, analysis of this additional data would not change the state and composite ratings.

The revised ratings are reflected in the following table.

Rating area	Performance tests and overall ratings*			
	Lending test	Investment test	Service test	Overall rating
Bank	High satisfactory	***High satisfactory***	***High satisfactory***	Satisfactory
State	High satisfactory	***High satisfactory***	***High satisfactory***	Satisfactory
Multi-state MSA	***Outstanding***	High satisfactory	***Outstanding***	***Outstanding***

*Ratings in ***bold italic*** were upgraded

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It's a pleasure to be with you today. Let me begin by urging you to stop by the Office of the Comptroller of the Currency's (OCC) booth here at the convention. Not only will you be able to obtain copies of some of our latest publications, both in hard copy and on a compact disc, but you will also be able to see a demonstration of one of our latest tools for bankers. It's called CAR—the comparative analysis report—and it will be fully functional next month. CAR will provide national banks—at no cost—with the ability to compare their own performance with that of any peer group of banks that they construct. I think you'll find this to be a very valuable and user-friendly tool, and I encourage you to give it a look during your stay here in Phoenix.

As others have noted, this is the final American Bankers Association (ABA) convention of the twentieth century. It's a unique opportunity to look back and sum up, and a good place to start may be with the ABA's final annual convention of the nineteenth century, which took place in Cleveland 100 years ago.

The agenda for 1899—a year of economic prosperity—featured presentations on a host of topics that would undoubtedly draw large audiences if they were on your agenda today. Bankers then were concerned with such things as disparities between state and national banking law, their own training and continuing education needs, bank security, and credit quality. Their speeches showed that they were aware—as I know you are—of the responsibility for upholding the standards of the banking profession in good times and bad, and for maintaining a healthy detachment from the market psychology of the moment, whatever it happens to be. As ABA president Walker Hill put it in his keynote address in Cleveland, "In times of such prosperity as this, bankers will be tempted with many visionary schemes, in which large profits are promised. These must be avoided, while we must not too conservatively deny aid and encouragement to the development of our resources." I'm sure those words have relevance to you today.

Of course, the banking business of today could scarcely be more different from that of a century ago. While the fundamental principles of banking and the dilemmas they sometimes create may be eternal, the context in which they operate has undergone massive, even revolutionary, shifts over the past century. What we as supervisors have learned from this century of turmoil is the subject I'd like to discuss with you today.

Of the banking crises that have occurred during the twentieth century, three decisively shaped today's industry and the way it's supervised: the Depression-era failures, the savings and loan debacle of the 1980s, and the wave of bank failures, primarily in the Southwest and Northeast, of the late 1980s and early 1990s.

In terms of the number of failed institutions and the impact on public confidence in the banking system, nothing compares to the crisis of 1930 to 1933. Those three bleak years saw the failure of nearly one out of three commercial banks in the United States—almost 9,000 institutions were lost. From 1930 to the end of 1932, bank loans dropped 44 percent; bank deposits dropped 30 percent.

In the aftermath of that catastrophe, with emotions at a fever pitch, Congress hastened to pass legislation that fundamentally restructured the banking and bank regulatory systems. Many of the critical provisions of the Banking Act of 1933 were purportedly derived from the lessons learned during the crisis. And in retrospect, much of what was enacted during those difficult, dangerous days addressed real needs. Clearly—to cite the most enduring of the measures adopted in 1933—federal deposit insurance was needed to restore and sustain public confidence in the banking system—just as it is needed today. At no little cost to the banking and thrift industries, the Federal Deposit Insurance Corporation's (FDIC) two funds—the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF)—are now fully capitalized and prepared to meet whatever contingencies lie ahead.

After resolving the crisis of public confidence in the banking system, Congress in 1933 took steps to address the problem of overbanking. It was not that the nation had too many banks per se, but rather that so many were unit banks with little capital whose fortunes were tied exclusively to their local economy. During the first few decades of this century, it cost less to open a bank than to buy a good farm in most states. These marginal institutions were the first to fail when times got hard. Indeed, 59 percent of all failures between 1930 and 1933 involved banks with under $25,000 in capital. The provision of the Banking Act of 1933 raising minimum capital for national banks was sound public policy. The importance of capital as a bulwark of safety and soundness was reaffirmed in 1991, when Congress passed the Federal Deposit Insurance Corporation Improvement Act. The requirement that banks maintain

sound levels of capital, coupled with a mandate to regulators to take prompt corrective action when capital drops below prescribed levels, has made an important contribution to the current strength of the banking system.

With hindsight, other provisions enacted in 1933 seem more a product of the emotionalism and politics of the times. The restrictions on the payment of interest on time deposits and the ban on interest on demand deposits were intended to relieve banks of the burden of engaging in ruinous price wars for their customers' funds, leading to reckless investments intended to maintain net interest income. Subsequent research has shown that this belief was basically groundless. For the first two decades after its enactment, the Regulation Q ceiling rate was about the same as the market rate, so the provision had little effect, positive or negative, on the financial institutions covered by it. Over the long term, however, interest rate ceilings led to serious disintermediation—which, as we'll see, was a root cause of the savings and loan crisis of the 1980s.

Another dubious provision of the 1933 legislation was the one that divorced commercial and investment banking. It was purportedly based on the notion that the securities affiliates of commercial banks had played a major role in undermining the soundness of the banking system. Even at the time, the case seemed shaky. Since then, the evidence has become overwhelming that banks with securities affiliates were not only not harmed by them, but that they actually survived the crisis better than comparable institutions that had no such affiliations. These institutions understood the value—and reaped the benefits—of diversification.

Almost 50 years later, we witnessed massive failures in the savings and loan industry. According to General Accounting Office estimates, the S&L disaster wound up costing the American taxpayer somewhere in the neighborhood of $132 billion. And that number does not include the additional potential cost to taxpayers from the so-called "net worth" cases pending in the courts today.

The underlying problem for S&Ls in the late 1970s was a classic interest-rate mismatch: locked into long-term, fixed-rate mortgage contracts, thrifts had to pay volatile market rates for funding. When interest rates moved into the high teens in the late 1970s, the real economic value of thrift assets plummeted. Regulators sat by, taking no effective action to force thrifts to restore their disappearing capital, pretending that book values, representing the original acquisition cost of mortgages, had meaning. By 1980, the industry as a whole was insolvent on a mark-to-market basis, yet hundreds of "zombie" institutions were allowed to stay in business. In 1982, the thrift insurance fund held approximately $6.3 billion, about one-quarter of the amount it would have taken to close all of the S&Ls that were then insolvent. Despite later attempts to recapitalize the thrift fund, this gap between its resources and its needs persisted throughout the decade.

The legislative response to the problem only exacerbated the difficulties, turning a problem of interest rate depreciation into an asset quality problem. In 1980 deposit interest rate controls were eliminated, and in 1982, Congress raised the deposit insurance limit from $40,000 to $100,000, allowing insolvent thrifts to attract larger and higher-rate deposits backed by a government guarantee. They then used these funds to make questionable loans and exotic investments. Since insolvent institutions have no incentive to avoid risk, thrifts threw prudence to the winds, hoping to earn their way back to solvency with high returns on risky ventures.

At the same time, a policy of extensive regulatory forbearance and forgiveness was pursued. Capital requirements for thrifts were dramatically reduced; loan-to-value ratios were eliminated; generous provisions were made for supervisory good will in the acquisition of troubled S&Ls; and accounting rules for thrifts were given the most liberal interpretation possible.

For a time, these measures seemed to work. Thrifts proved highly successful in competing for deposits—too successful, as it turned out. In 1983 and 1984 alone, more than $120 billion of new funds poured into thrift accounts. Relatively little found its way into residential real estate, the thrift's traditional bailiwick. Instead, thrifts pursued high returns in commercial real estate, to the tune of nearly $80 billion in new thrift investment between 1982 and 1985. Many of these projects were highly speculative and quickly failed. By the late 1980s, forbearance had been discredited, the thrift industry was in a shambles, and the biggest taxpayer-financed bailout in American history was under way.

Among the most important legacies of the S&L crisis—aside from the enormous cost to federal taxpayers—was its impact on the banking industry. The thrifts' drive for deposits bid up the cost of funds for all financial institutions, and their feverish pursuit of assets forced many banks to drop their own underwriting standards in order to retain customers. Thrift investments contributed to the glut in commercial real estate, which drove down the value of comparable assets in bank portfolios. By the late 1980s, we were in the midst of the third major banking crisis of the century, with a wave of bank failures of a magnitude not seen since the Great Depression.

When the bottom fell out of energy prices in 1985, many banks heavily concentrated in oil and gas lending in Texas and Alaska—the two hardest hit states in the country—absorbed big losses, despite the fact that these loans were ostensibly secured. The problem, of course, was that in a down market

for energy, the value of the oil rigs and equipment pledged as collateral declined in direct proportion to the decline in the value of the oil and gas that came out of the ground.

Shortly after the shocks to the energy loan market, banks in the Northeast found that many of the commercial real estate projects they had financed were falling apart. Losses began to pyramid. By the early 1990s, a great many of the leading banks in both the Southwest and Northeast had disappeared, and the resources of the FDIC insurance fund had been virtually exhausted.

While the failures of the late 1980s and early nineties had their roots in the energy and real estate sectors, banks that failed had a number of things in common: high loan-to-asset ratios relative to their peers, unusual concentrations of loans in volatile sectors like energy, agriculture, and commercial real estate, and a weak risk management culture.

What *have* these three crises taught us that we can use as we look ahead and plan for the new century? One could obviously come up with a very long list, but I'll limit myself to just a few of what I think are the most salient lessons for bankers and supervisors.

The first is the need for a strong deposit insurance fund. It's no exaggeration to say that federal deposit insurance saved the banking system during the 1930s, and it certainly did so again in the 1980s and 1990s. Although the bank insurance fund underwent serious strain, unlike the thrift fund it never exhausted the resources it needed to close insolvent institutions. Ultimately that contained the cost of resolving the crisis and facilitated the banking system's eventual recovery. It is now time to take the final steps necessary to assure the strength of the funds for the future, by merging BIF and SAIF.

The second lesson speaks to the importance of diversification for banks. During the 1920s and 1930s, as I've suggested, the banks that fared best were those with the broadest geographic and product reach. That was just as true during the thrift and banking crises of more recent times. It's important not only that banks avoid undue concentrations in particular kinds of loans but that they avoid undue reliance on volatile net interest income generally. Indeed, even today, when bank earnings are at an all-time high, noninterest income is playing an increasingly important role in bank earnings, as the competition for conventional credits intensifies. Clearly, banks need to be afforded better means of diversifying their income streams. That is why we strongly believe that an approach to financial modernization that would deprive banks of the opportunity to develop such sources, and that would divert bank earnings opportunities and capital resources to holding company affiliates, is completely contrary to sound supervisory policy.

The experience of the late 1980s and early 1990s still has much to teach us as regulators, too. We should have learned that supervisors cannot wait until problems work their way into the banking system before reacting to them. It's clear that, during the late eighties, supervisors were lulled into complacency by the general prosperity of the times. In the Southwest, the widespread premise that energy prices would continue to rise was too readily embraced. Similarly, in the Northeast, the possibility that, in a seemingly diversified economy, the rapid increase in commercial real estate values could quickly reverse itself was not taken into account. In both cases, when it became clear that deterioration *had* set in, supervisors did not speak out soon enough or loudly enough or persistently enough for bankers to react effectively. By the time supervisory action was taken, it was necessarily precipitous. Loans that passed muster in one examination were severely criticized in the next, as examiners demanded large additions to loan loss reserves previously thought adequate, with serious consequences—for, among other things, the credibility of supervisors.

The final lesson concerns the way we do our duty as supervisors. We must face the facts as they are, not as we might wish them to be. Earnings and asset values may be at record highs, and the outlook for future growth positive. But when we see risk spreading in the banking system, we must speak out and act, in a modulated and well-calibrated way. This is not an easy job or a pleasant one. But history has shown that when we shrink from this responsibility, the consequences can be disastrous.

Over the past three years we have repeatedly voiced concern about deterioration in credit quality and the increase of embedded risk in the banking system. More recently, we have been particularly concerned with the high degree of reliance some banks are placing on optimistic assumptions about future cash flows and on intangible "enterprise values." We see an increasing volume of loans where the ostensible security is going concern value. But "enterprise" value is illusory as collateral, since the same circumstances that cause the borrower to default on the loan are likely to cause the "collateral" to become worthless—exactly the situation that caused losses for energy lenders in the 1980s. The equity-like characteristics of many of these highly leveraged bank loans make them extremely vulnerable to adverse shifts in borrower performance and market conditions. Many seasoned examiners who lived through the crisis that started in the late 1980s say that conditions in the industry today are all too reminiscent of conditions in New England 15 years ago.

For these reasons, in September 1998, we instructed all examiners to be alert to loans with structural weaknesses and to report them to bank managers and directors. We also instructed them to report lending situations where the repayment was heavily reliant on optimistic increases in sales volumes, cash flows, asset values, and equity values, including enterprise value. That's also why we issued guidance on leveraged lending earlier this year, which highlighted the disconcerting interdependence of repayment sources for loans predicated on enterprise values.

We are pleased that several weeks ago our colleagues at the Federal Reserve echoed our concerns about loans based on optimistic assumptions. We have recently invited the Federal Reserve to join the OCC and the FDIC in an interagency review of a sample of loans from the recent shared national credit results, with a special focus on highly leveraged loans. The purpose is to assure that we develop a unified and consistent approach to the evaluation of these credits and to the appropriate supervisory responses.

Sounding serious warnings during a time of high earnings, strong capital, and record returns on equity is not calculated to endear supervisors to bank managers who are scrambling to maintain high levels of performance. And carping about the structural weaknesses of loans that are currently performing may puzzle bank directors. But these are serious concerns and they call for serious responses.

You've heard philosophers bemoaning society's failure to act upon the lessons of the past. Those lessons are often ambiguous and misleading, and they need to be tested against changing circumstances. Only then can they be viewed—and used—as reliable guideposts for action.

After a century as diverse and eventful as the one now coming to an end, I think we've reached that point. The lessons of the past—for bankers and bank supervisors—are clear and unequivocal. There's no confusion about what we need to do. All that remains for us is to do it.

Remarks by John D. Hawke Jr., Comptroller of the Currency, before a Conference on Measuring Financial Risk in the Twenty-First Century, on risk measurement models, Washington, D.C., October 15, 1999

Two millennia ago, the leaders of ancient Greece and Rome would consult an oracle to help them assess the potential losses associated with critical decisions of statecraft. In other words, they looked to the oracle to provide insight into the magnitude and probability of risk.

The oracle's research generally consisted of disemboweling a goat and sifting for clues in the entrails. Not surprisingly, the revelations gained by this method proved to be of limited value. But without any better alternatives, this ritual survived for a thousand years, to the dismay of the goats.

Today the supply of seers trained in the art of examining entrails is rather limited. Fortunately, with the advent of the scientific method, we now have advanced tools to aid in decision making. Modern information and communication technologies have increased the emphasis on data and the speed at which some decisions can be made. In the financial industries and elsewhere, quantification abounds. Indeed, the use of vast amounts of data and analytic tools to measure risks is one of the defining, if less noticed, characteristics of our financial age.

At financial institutions the modern-day analogue to the oracle is a modeler who holds advanced degrees in economics, finance, or even physics. Those modelers have sophisticated computer hardware and software and extensive data upon which to base their analyses. They use modern mathematical techniques, sometimes borrowed from the physical sciences. And emerging techniques hold out promise for further advances in risk assessment. While some may recoil at the complexity of such measures, at least the goats have won a reprieve.

Despite the application of increasingly sophisticated techniques by well-trained people, we are frequently reminded that risk measurement is an imperfect discipline. Analysts, even the best and the brightest, are still caught by surprise by sudden movements in interest rates, foreign exchange rates, and asset prices. Perhaps the situation is best summarized by the plaintive question we hear so often: how many more times will we see the financial equivalent of the thousand-year flood?

Given the demonstrated limitations of risk measurement, there are those who would dispense with it and restore the primacy of instinct in risk assessments. This school of thought claims that risk can be sensed but not accurately measured. Thus the lines are drawn.

Our conference was stimulated by the significant strides that have been made in risk assessment and by the divergent views about the outlook for progress in this area. In effect, we have come together to ask this question: is risk measurement an advanced science—or a pseudoscience to be ignored?

The answer, of course, lies somewhere in between. Financial risk measurement has evolved and its evolution continues. Quantification is an essential ingredient of any risk management system, but it's no panacea.

In order to understand where we are in terms of risk measurement, it is helpful to see where we have been and how we got here. Obviously, the sophisticated risk measurement tools that we think of today are of fairly recent vintage. Yet, asset manager and financial writer Peter Bernstein reminds us that European bankers were controlling risk before they even had a rudimentary understanding of fractions. Bernstein observes that Western Civilization did not even embrace the Hindu–Arabic numbering system—which allowed for fractions—until late in the fifteenth century and it took another three centuries before modern probability theory evolved. Clearly, banking and financial risk taking predated advanced mathematics.

In the absence of analytical risk measurement tools, banks, like other businesses, practiced sensible risk management principles such as diversification and risk shifting through rudimentary insurance and futures markets. But demand eventually led to important advances, especially in mathematics, and they were catalysts for still further improvements in our ability to analyze and measure risk.

In recent centuries, the interplay between the demands of business and the supply of knowledge combined to give us modern, market-based economies. Science and technology accelerated production and commerce. The harnessing of power, advances in engineering and rapid transportation combined to create complex economies. The linkages inherent in complex market economies brought both abundant rewards and new risks.

More recently—basically in the post–World War II world—we have seen the development of modern financial theory.

Modern portfolio theory, which provides a rational basis for the principle of diversification, dates to the 1950s. Option pricing theory, in the form of the now famous Black–Scholes formula, dates to the early 1970s. That date, more than any other, marks the beginning of the modern era of financial derivatives.

Over the last two decades, advances in computers and telecommunications have changed the economy again. At the same time, advances in the use of those technologies have changed risk analysis. It is now routine for financial firms to employ experts with advanced degrees in mathematics, statistics, computer science, physics, chemistry, and other scientific disciplines, as well as finance. We enter the new century with a financial system that is dependent on data, models, modelers, and fluid markets.

It is axiomatic that banks are in the business of managing risk. It gives that axiom a modern twist to say that banks are engaged in risk measurement, presumably using sophisticated tools. Interest in risk measurement in banking has now become so broad and deep that even corporate boardrooms are not safe from references to probability distributions or "value at risk" numbers. Journals devoted solely to the measurement of risk have begun to appear on coffee tables in bank reception areas. Given the extent to which the lingo of risk measurement has permeated routine financial discourse, one might easily conclude that it is simply a matter of time before we will be able to quantify all of the risks that banks face!

However, if you scratch below the surface—if you actually read the journals or talk to the practitioners—you quickly discover that there are many unanswered questions about how to measure risk. There are serious disagreements about the fundamental issues of how to define risk and about whether risk measurement is a realistic goal. That is why we are delighted to offer this conference—so that we can learn from one another to get a better sense of how each of us defines and attempts to measure risk

Experts have advanced different views as to what "risk" actually is and how it should be measured. Yesterday, we had two sessions devoted to defining risk, and there was more agreement than some might have expected. We heard that the development of risk measures is at different stages for different types of risk. The measurement of market risk in traded instruments is more advanced than the measurement of interest rate risk in the nontraded portions of bank portfolios. The measurement of credit risk lags further. And the measurement— let alone the definition—of operating risk lags further still. We also heard that banks are at different stages in their implementation of risk measures.

Perhaps the most important point that has emerged from our conference is that measuring risk is devilishly difficult work. It seeks to measure what's not actually known. Indeed, an important and nettlesome component of risk measurement is determining the probabilities of various outcomes. And the fact that those probabilities are not directly observable means that risk measurement must rely on models that attempt to represent those probabilities. In other words, we might be better off if we called it risk estimation instead of risk measurement. This is more than a difference in semantics. The distinction drives home the importance of the definitional discussion we heard yesterday. Modeling and measuring risks requires clear definitions.

Which risk one focuses on reflects one's objectives. Among my duties as Comptroller of the Currency is to maintain the safety and soundness of the banking system and to monitor the industry so as to identify those banks taking "excessive risks." Thus I focus attention on the financial risk to banks—the chance that future losses will eradicate capital and that future earnings will be extremely low, perhaps even low enough to cause failure. Obviously, that risk concept is of interest to bank creditors, bank managers, and other stakeholders in banks. However, the financial risk that I focus on is different, for example, from the risk on which an investor in a bank stock might focus. While investors in the stock are, of course, interested in the risk that the bank might fail, that is not their only concern. Stock investors are interested in the added risk to their diversified portfolio.

The second reason to distinguish between the measurement and the estimation of risk is that terminology affects perceptions. When we are told that banks use risk measurement tools, it provides the comforting connotation of precision. But when we then read that a bank has been surprised by large losses, we blame the risk measurement model. Both reactions are exaggerated. Models are not exact. No single event can prove or disprove their validity.

This leads me to the third reason it is important to recognize the distinction between measurement and estimation. The validation of risk estimation models is a difficult exercise. There is no absolute standard by which we can judge a risk model. All models are, by their nature, imperfect—yet hopefully valuable—approximations of reality. Thus, the relevant question is whether one model is better than the next. But because different models seek to do different things, determining their accuracy and reliability is often difficult to do.

Thus, the complexity and inherently forward-looking nature of banking has led to the use of risk models. While risk modeling requires precise definitions, those models

cannot deliver precise measurements. Furthermore, only with the passage of time can we validate and improve those models. Together, these factors go a long way toward explaining why, despite the impressive advances in computer science, mathematics, and financial theory, we have still not finished the task of building risk measurement models in banking.

The Office of the Comptroller of the Currency (OCC) employs an approach to bank supervision called *supervision by risk.* An important component of that approach is that banks are expected to know what risks they are taking, understand the implications of those risks, and be able to manage them. Since risk measurement relies on models, we expect banks to be aware that they face *model risk*—the imprecision associated with the use of any model. We expect banks to approach model risk in a prudent and systematic fashion, as they would approach any other risk that they face.

We expect banks to understand any model that they use. That means that banks should understand that models are not calculators and that they do not give precise answers. That means that we expect banks to understand not only how to operate their model, but also to understand its limitations. And we expect banks to have in place a process for validating the models they build and for critically evaluating the validation of models that they buy. That means educating or hiring staff that understands the models. That means investing in infrastructure that will allow monitoring and reporting on the operation of models.

Model validation, in this context, means making the determination that a model is appropriate for a particular use. We understand that model validation is difficult. Since every model has its limitations, a model cannot be held to any absolute standard of performance. Instead, a model is validated by comparing it to an alternative. Such validation requires expertise in modeling and experience in judging models. At the OCC we use experts in model validation to review the process that banks have in place to validate their models.

In short, while models can be quite sophisticated and complex and useful, banks cannot place undue reliance on the output they produce.

I can tell you with some confidence that developing improved risk measurements will continue to be a priority for banks and regulators. The information revolution, technological advances, and intense competition that accompany any industry deregulation mandate it. Better risk measurement will inevitably lead to better risk management. Those banks most capable of incorporating good risk measurement strategies into their decision-making functions will ultimately realize greater financial returns.

However, financial risk measurement has a long way to go before it lives up to its notices. Until we adjust expectations about what risk models can realistically deliver, some who use them will inevitably be disappointed.

This conference has provided a forum to begin some reconciliation of risk measurement issues and differences. Over time, some of the approaches discussed during these two days will prove superior to others. The market will ensure that those approaches that provide the most valuable information will remain in use. Those approaches that prove less useful will fall by the wayside. But, given its importance, neither bankers nor regulators can afford to sit on their hands and watch this process run its course.

Even the most advanced current techniques and procedures will inevitably outlive their usefulness. Better procedures will continue to replace less useful ones. The business of banking will continue to change, and risk measurement will change with it. We've got some tough miles ahead. At least it should be easier on the goats.

Remarks by John D. Hawke Jr., Comptroller of the Currency, before the FFIEC Risk Management Planning Conference, on community banks and risk management, Washington, D.C., November 8, 1999

Three weeks ago, the Office of the Comptroller of the Currency (OCC) sponsored a conference on risk measurement here in Washington. We had a big turnout of financial professionals, including dozens of community bankers from cities and small towns across America. They heard from many of the world's leading academic and private sector authorities about developments in risk modeling and management. They learned about the state of the art in analyzing and measuring various types of risk, the theoretical bases for these models, and where future research and development in this area is likely to lead us. It was a stimulating two days.

But while the conference featured enough differential equations and standard deviations to gladden the heart of most mathematicians, there was a lot more to the conference than numbers. We made a point of including on the program a number of prominent end users—bankers like you—to talk about the practical value of the new technology in the larger context of risk management.

These bankers displayed a more tempered enthusiasm for risk models. They agreed that models can be an important element in the overall risk management regimes of some—but not necessarily all—banks. They agreed on the need for potential users to look at the models critically and cautiously, to fully understand their strengths and limitations before adopting them. And, most of all, they agreed that even the best of these models should be seen as a component of—rather than a substitute for—a risk management program solidly grounded in sound judgment.

One would most expect to find advanced risk measurement capabilities in the largest and most diverse financial institutions. Risk modeling is indispensable in helping to manage the risks inherent in their vast and varied portfolios. Indeed, we as supervisors would look askance at any institution that takes on such complex risk *without* having risk measurement systems of comparable power and sophistication.

So it was instructive to hear the chairman and co-CEO of one of the nation's largest banks—a bank that has been on the cutting edge of financial services for decades—talk to the conference not about his own bank's advances in modeling and measuring risk but about the fundamental principles of risk management—principles validated by this one bank's own recent experience, but equally applicable to banks of all shapes and sizes.

He discussed such fundamental concepts as the importance of capital adequacy—and defined adequacy in the most expansive terms. He warned against losing sight of the macro factors—political and social as well as economic—that shape the risk environment. He emphasized the importance of independent internal risk assessments and the dangers of allowing these assessments to be performed by the operational unit responsible for the activity. And, most of all, he stressed the need for an overall risk management strategy—a strategy based on a clear understanding of the institution's tolerance for risk—and the will to see it through, even when that means forgoing short-term profit.

To some members of our audience, all this may have been seen as simply restating the obvious. But the importance of risk management solidly grounded in the fundamentals can never be exaggerated or taken for granted. Your bank is not Citibank. But the principles that John Reed articulated are as vital and relevant for community banks and for our high-tech times as they were in the days before anyone knew what a computer model was.

You may not give a second thought to the political turmoil in Indonesia or other distant lands because you think you have no business exposure there. But, directly or indirectly, your customers might well be exposed—and if they suffer losses as a result, you might well suffer them, too.

You might consider your bank adequately capitalized because it meets or exceeds all statutory standards. But how long would that capital last in the event of a downturn in your local economy? As we know, minimum capital and adequate capital are hardly synonymous.

You know your employees by name. You trust them implicitly. But it's still not prudent to rely on the credit officer who *originated* a loan for an evaluation of how well the loan is performing or what the prospects are for repayment. An independent opinion from someone who does not have a reputational stake in the transaction is essential. For financial institutions of all types and sizes, checks and balances are essential.

The point is that while community banks face risks that are different in degree from larger institutions, they are in many ways little different in kind. Even the difference in degree

is not always what you'd expect. In some cases, the risks facing community banks can be compounded by the advantages of scale they lack. For example, it's relatively easy for a megabank to redeploy resources to augment the loan review function when management decides it's necessary. But where does the community banker obtain that independent second opinion when there's no second person with the necessary skills at hand to do the job?

Similarly, it's relatively easy for an integrated megabank with an international presence to diversify its asset base when management decides that concentrations have reached the point of concern. But how do you as a community banker achieve diversification greater than that of the community you serve? For better or worse, its future and yours may be inextricably linked.

I'm not suggesting that risk models and other advanced risk management tools have no place in the overall business strategy of community banks. In fact, just the opposite is true. Technology *will* help resolve some of the business dilemmas that I've just described. It *can* help compensate in some ways for the manpower limitations that are an inescapable fact of life for most community banks. Much of the software that is being developed today to help measure and manage risk is targeted at the small bank market, and the presence of so many community bankers at our conference shows that there's a keen interest in what these products have to offer. Community banks have long used gap models to help them measure asset-liability mismatches, and credit-scoring models have already proved their worth in the loan origination process in many small banks. The use of these and related applications should increase as they improve in reliability and user-friendliness.

But while technology can be an invaluable adjunct in the management of risk, and will undoubtedly play an even bigger role in managing it in the future, it can never provide the whole answer, not for a $100 billion bank and not for you. Community bankers seem to have fewer illusions on this score than some of their large bank counterparts. What we see—encouragingly—is that community bankers are working hard to manage risk by educating their customers in better ways to manage theirs. For example, some agricultural banks are working with borrowers to help them manage the risk associated with volatile commodity prices—long the farmer's bane. By encouraging forward sale and marketing arrangements for their crops and livestock, farmers can be assured of a more predictable income stream, in good times and bad. In many cases, this has made the difference between a farm loan in default and one that's current. Some big city bankers could learn something from some of their smaller counterparts' innovative approach to managing risk.

We see community bankers taking advantage of Small Business Administration and other government guarantee programs to serve as a buffer against risk. Some small banks have even established relationships with banks in nearby communities to help mitigate the effect of concentrations. More and more are taking advantage of opportunities to securitize and sell parts of the loan portfolio to access new sources of liquidity and reduce credit risk.

Such instances exemplify risk management at its best. A bank's approach to risk must be as creative—and as soundly grounded in the fundamentals—as its approach to any other aspect of its business. In other words, risk management cannot be reduced to a tool or technique or even a model; it's a philosophy—a consciousness—that must permeate every aspect of a bank's operations. It starts with an awareness of the forms that risk takes. You can't manage what you don't recognize or understand, and it's the banker's job to inculcate that awareness in the bank's decision makers and its board. It sounds simple, but it's fundamental to effective risk management.

The fact is that a bank can have all the right mechanisms and procedures in place and still not have an effective risk management regime if management's heart is not truly in it. For example, a bank's audit department can be well staffed and trained, and be dogged in pursuit of irregularities. But if the bank's culture encourages these problems to be resolved without addressing them at their source, it invites a recurrence. That's not effective risk management.

If a bank's compensation plan rewards loan production and loan growth and does not hold its people accountable for the quality and performance of those loans, that too is not effective risk management. Again, lip service to the principles of risk management—even when accompanied by an infusion of resources—is not enough. Good risk managers are true believers.

For most community banks, the loan portfolio is the largest asset and the primary source of revenues. It's also one of the greatest sources of risk to the bank's safety and soundness—and the toughest test of a bank's risk management capabilities. When OCC examiners find that banks have effective credit risk procedures in place, it tells them a great deal about a bank's overall attitude toward risk.

There was a time when it was sufficient—from the examiner's standpoint—that individual loans be properly underwritten and administered. While we strongly believe in the fundamentals of controlling risk at the transactional level, we also take a more comprehensive view of the loan portfolio than ever before, recognizing that

the interrelationships among portfolio segments can be as important in determining a bank's credit risk profile. So we look for those things that define a sound risk management culture: clear objectives and risk tolerance limits, management information systems capable of monitoring loan performance, diversification policies, policies on exceptions, stress-testing procedures, and independent audit, loan review, and control functions, *supplemented by* the appropriate risk measurement tools. And we look to ensure that these and other risk management functions work in harmony with one another. The failure of any one can render the others ineffective.

All banks need to have fundamental risk management principles in place in some form. But the extent to which they must be formalized into written policies depends on the size of the bank, and the complexity and character of the risk it has assumed. In the largest and most sophisticated banks, policies need to be formal and prescriptive. Community banks, on the other hand, may be able to implement these principles in a less formal, less structured manner than larger banks.

The way banks manage credit risk is a good barometer of its approach to risk management across its business. I know of few institutions where careful attention to the fundamentals of controlling credit risk is not reflected in the institution's approach to controlling the other forms of risk that banks assume.

Much has been said in recent years about change in the banking system. Given the legislative events of recent weeks, the changes that have occurred already will almost certainly be overshadowed by the changes soon to come. It now seems certain that the arrival of the new millennium will coincide with the start of an important new chapter in the life of this industry. We don't know what the banking business will look like ten years from now except that it will look significantly different than it looks today.

But I know of at least one thing that won't change. The fundamentals of risk management are timeless. Bankers who conscientiously and effectively manage risk will be successful. Those who don't manage risk well will eventually be overwhelmed by it. Whatever else happens in the coming years, that much we can count on.

Remarks by John D. Hawke Jr., Comptroller of the Currency, before the Consumer Federation of America, on consumers and financial modernization, Washington, D.C., December 2, 1999

The Consumer Federation of America (CFA) has been serving consumers with such distinction for so long that it's easy to overlook the importance of your contribution to effective government. Over the past fifteen years, CFA's annual financial services conference has provided an opportunity for regulators like myself not only to share our thinking with the hundreds of organizations and millions of members who operate under the CFA umbrella, but to hear first hand about your concerns.

So I'm particularly grateful for the invitation to be with you today to talk about the place of the consumer in the ongoing financial services revolution. As your program notes, the changes underway in banking and its sister industries hold both opportunities *and* challenges for Americans. In my remarks this afternoon, I'd like to focus on some of the major issues that face consumers of financial services—and those who supervise and regulate financial institutions—here on the threshold of the twenty-first century.

The biggest story of this year in financial services is undoubtedly the Gramm–Leach–Bliley Act, which President Clinton signed into law on November 12. The new act caps many years of effort to bring our financial laws into harmony with changes already underway in the marketplace. It dismantles the barriers that restricted the ability of financial providers to offer a full range of products and services, and it reverses the policy of market segmentation that had been in effect for more than six decades. The act is truly a historic measure.

Obviously, this was a bill that had broad support from the financial services industry. Many who speak for consumer interests, on the other hand, were much less enthusiastic. Some longstanding consumer concerns—for example, about basic banking services—were not addressed in the bill at all, and I know that other concerns—especially in the privacy arena—were not addressed to your complete satisfaction—or mine.

While we might have drafted some portions of the act differently if we had our way, I think it's important that we evaluate the bill in its totality. This was an enormously complex piece of legislation, which spurred controversy on almost every page. An exceedingly large number of interest groups and private parties lobbied the bill hard for several years. Enactment of this legislation required compromise and concessions on virtually everyone's part. So we need to ask not whether our specific legislative aims were realized with respect to each and every issue, but rather whether, on balance, the new law advances fundamental public interests at acceptable cost. And I fully appreciate that some—perhaps many—of you would answer that question in the negative.

Now that the smoke has cleared somewhat, it's time to step back and look at the act objectively as a whole and ask what's in it for consumers. How is the law likely to affect average Americans and their relationship with financial institutions? Most importantly, does it advance their fundamental interests? I believe that it does. And I'd like to spend some time with you today explaining why.

We began with the premise that as consumers and taxpayers, all of us have an important stake in a safe, sound, and competitive banking system. The ability of a single financial organization to offer a full range of products and services strengthens banks by diversifying income streams and reducing their dependence on potentially volatile net interest income. Healthy bank balance sheets help to assure that resources will be available in the coming years for individuals and communities to grow and prosper.

But just as important, the elimination of governmentally imposed barriers to competition should increase convenience and choice, and reduce the costs of financial services for consumers and businesses. That's been the effect whenever such market restrictions have been relaxed or removed. For example, when governmentally imposed caps on the interest financial institutions were permitted to pay on deposits were removed twenty years ago, consumers were able to secure market rates of interest on their insured savings. And when fixed commissions were done away with in our securities markets, customers reaped significant benefits from the competitive marketplace that developed.

Based upon prior experience with deregulatory measures, the Treasury Department has estimated that increased competition under the provisions of the Gramm–Leach–Bliley Act could reduce the cost of financial services by as much as 5 percent. Considering that American families spend over $350 billion a year on fees and commissions for brokerage, insurance, and banking services, the potential savings could be

in excess of $18 billion a year. And that's just for households. American businesses pay about the same amount in fees and charges for financial services, and could expect comparable savings.

As financial institutions begin to take advantage of the provisions of the act, it will be particularly important that they listen more closely to consumers. One of the advantages of a more competitive marketplace should be that the voices of customers are better heard by providers seeking to capture market share. This does not mean that all consumer objections will result in changes in bank policies. But it does mean that the service that banks provide should improve as customers more vigorously exercise their right to choose their suppliers of financial services in a fully competitive environment. The quality of customer service should be every bit as important to a provider as the quality of their product. I have spoken out, as Julie Williams did before me when she was Acting Comptroller, about the importance of customer service—not just for customers themselves, but for the bank's reputation as a service provider and, ultimately, for its soundness as a financial institution.

In case there was any doubt about the importance of this issue, recent months have seen several major banks penalized by the market for poor customer service. These banks not only fell out of favor with their customers—many of whom are now someone else's customers—but they also suffered criticism from the investment community. It's a lesson that's not been lost on the rest of the industry. I know of a number of financial firms that have taken steps to improve customer service in order to avoid similar problems. And I'm confident that others will follow as financial institutions enter the new, even more competitive era.

Let me now turn to the question of customer privacy. I think it's instructive to remember that it was scarcely 18 months ago that Acting Comptroller Julie Williams broke what was then new ground, delivering what may have been the first speech ever by a bank regulator on the subject. This spring, I spoke about some questionable practices that were being engaged in by banks linked with telemarketers, and those remarks reverberated on the floor of the House of Representatives a few days later, as the privacy amendment to the financial modernization bill was being considered. Just as Julie predicted, privacy has been transformed from an afterthought into a major concern for financial institutions and regulators, as well as for consumers. I'm proud of the leadership that the OCC has provided on this important issue.

I come to the privacy issue with almost four decades of experience in dealing with banks and bank regulation. In my view, vindicating customers' expectations that their banks will hold in confidence the information that customers entrust to them is a critically important foundation stone of our banking system. Bank customers not only provide information about their wealth and resources, and their sources of income and spending patterns, but about such other matters as their insurance coverage, family relationships, retirement plans, and even their health. They expect this information to be held in confidence. They expect their transactions to be processed neutrally and nonjudgmentally by their banks. They do not expect their banks to serve as the eyes and ears of government surveillance, nor do they expect their banks to use their confidential information for the banks' own profit-making purposes—at least not without their consent. If these expectations are not met, the consequences for the relationships between banks and their customers—and therefore for the health of the banking system—could be grave.

To be sure, for the new act's objectives to be fully realized—that is, for competition to work effectively in reducing costs—financial institutions must be free to market the full range of their products to their existing customers, and to take advantage of the new synergies and efficiencies. By the same token, a great many consumers will appreciate the benefits of one-stop shopping. No longer will they have to go to multiple sources for the variety of investment and financial products they desire—each source perhaps having a vested interest in pushing the product or service it is limited to offering.

On the other hand, I wonder whether customers will feel comfortable getting unsolicited calls from brokers affiliated with banks saying, "I see you've got some large balances in your bank accounts. Let me tell you about some hot stocks I can put you into." Or from a bank-related insurance agent saying, "I see from your recent loan application that you don't have much life insurance. I'd like to come talk to you about an insurance program."

Maybe some customers *will* appreciate this attention to their needs. Others, however, might find it a very troubling invasion of their privacy that their banks are feeding sensitive information to sellers of nonbanking products.

Gramm–Leach–Bliley sparked a vigorous debate over the extent to which customers should be given control over the use of their confidential financial information. And while the final legislation enacted groundbreaking protections, it did not, in my opinion, go far enough. In particular, the act adopted different rules with respect to information- sharing arrangements among affiliates, on the one hand, and nonaffiliates, on the other. Customers were given new rights to veto the use of their information with nonaffiliates, but

not with affiliates. This distinction was drawn in the face of strong opposition by the financial industry to allowing an "opt out" for affiliate sharing. The industry's argument was that to allow customers to prevent banks from sharing confidential customer information with their affiliates would destroy the synergies and efficiencies that would be made possible by the new law.

I don't accept this argument, and I think it is shortsighted of the industry. Respecting a customer's desire for privacy and realizing the benefits of the new law are *not* mutually exclusive. Moreover, I don't believe that customers who want their information protected will draw any distinction between affiliates and nonaffiliates. Dinner hour calls from telemarketers are just as annoying coming from either, and if customers want to opt out of nonaffiliate sharing, they are likely to want the same rights with respect to affiliate sharing.

Furthermore, it should not be assumed that customers will automatically opt out. If banks and other financial firms really have something to offer customers, they should be able to convince them not to opt out—that information sharing is really in their interest, if that is in fact the case. There's a certain patronizing quality in the argument that we shouldn't allow customers to opt out because we really know what's best for them. Indeed, I think banks should be explicitly competing with one another as to the quality of the privacy protections they offer.

Finally, sharing confidential customer information with affiliates is not by any means essential for financial services organizations to cross-market their products. It is simply an exaggeration to suggest that the purposes of the act will be frustrated if banks can't override customer objections to the use of such information for cross marketing.

Encouragingly, there's growing evidence that the privacy provisions of the bill will not be the final word on the subject. The President has already expressed his belief that Congress should revisit the subject next year. Judging by their early pronouncements, financial companies seem increasingly aware of the need to meet and exceed the act's privacy standards if stiffer legislation is to be avoided. The realization that privacy has become a key competitive factor—that consumers will choose to do business where they feel their confidentiality is best protected—does seem to be sinking in.

Whether or not industry self-regulation will prove effective in this regard is an open question. Frankly, history does not make me terribly optimistic. But let me assure you that we will be watching carefully to assure that consumers are afforded all of the protections the law provides.

You should know that the act enhanced our authority in that regard. It enables us to craft regulations to enforce the new provisions that prohibit financial institutions from disclosing "nonpublic personal information" to nonaffiliated third parties without notice to consumers and without allowing them to opt out. It also gave us the authority to assure that customers are given full and fair notice before such information can be shared with affiliates. And it eliminated restrictions on our ability to examine national banks for compliance with the provisions of the Fair Credit Reporting Act. We intend to use that authority wherever appropriate.

In essence, the debate over privacy centers on the value of information in the marketplace. The fact is that consumers of financial services—no less than the providers of those services—depend on the free and full exchange of information to make the most rational economic choices.

Consumers must have information to make wise choices in today's complex financial world. That's why we warmly support counseling and financial literacy efforts. These efforts are of enormous importance for our country's least affluent consumers, for they are the consumers who are the most likely to fall victim to abusive lending practices.

On the subject of what is sometimes called "predatory" lending, let me state that while our existing laws may not reach all of the practices that many would consider abusive, the OCC will enforce existing law rigorously. National banks should not generate their earnings by preying on the disadvantaged, and we will heighten our supervisory scrutiny whenever we suspect such activity is taking place.

But I think it's important to recognize that this is a problem that defies a simple solution. For one thing, some of the lending practices that CFA and other consumer groups have raised objections to—such as "payday" lending—are activities that the law authorizes banks and other lenders to conduct. While we can require that the very limited number of national banks that engage in payday lending do so in strict accordance with applicable disclosure and other consumer protection laws, existing laws give them authority to make such loans.

There's another dimension to this issue as well. While some see such loans as a snare that hopelessly entangles marginal borrowers, others see them as providing a source of credit where no others exist. This difference of views raises an issue of social policy that is particularly appropriate for legislative consideration—and particularly difficult for bank regulators to resolve.

You would not want me to leave here today—and might not let me out the door—if I didn't close with a few words about an issue that has been much in the headlines lately. That's the question raised by local bans on automatic teller machine (ATM) surcharges. The movement to ban these fees has obvious appeal, but I believe it is a case of good intentions gone awry. I believe that if these ordinances spread, they will ultimately hurt the very same consumers they were intended to help.

Bank fees of all kinds have been a source of rising consumer irritation in recent years. Fees and charges constitute the third most common kind of complaint filed with the OCC's customer assistance group so far this year. And I'm sure that what our customer assistance representatives see and hear is just the tip of the iceberg. Most consumers simply grit their teeth and pay up. And they join the ranks of Americans who view bankers as adversaries.

That's why it's important for the banking industry to better explain why such fees are necessary and proper—to justify them in the court of public opinion. The fact is that, since the surcharge ban was lifted three years ago, the banking industry has invested more than four billion dollars in new ATMs, and the deployment of ATMs has skyrocketed. Banks will understandably place ATMs first at locations at which they can expect high volumes of customer usage. But competitive pressures—and the profit motive—should lead them constantly to seek out new locations in less heavily trafficked areas. The prospect of being able to charge fees to those noncustomers whose convenience would be served by the deployment of ATMs in more marginal areas is an obvious incentive for banks to reach out to less well-served markets.

I know that some of you have strong differences of view on this question. Perhaps the best we can do is to agree to disagree. Quite apart from the merits of the economic argument, however, the issue of federal preemption of such local laws is an important one for us. Whatever one might think about the merits of such measures, we continue to believe that such laws cannot constitutionally be applied to prevent national banks from charging a fee for a service that they are clearly authorized by federal law to provide.

We should move beyond the impassioned rhetoric of the moment on the ATM controversy and focus instead on educating our citizens to become more knowledgeable financial consumers. Indeed, when ATM surcharges started to become more common, consumers learned very fast how to seek out terminals at which no charges were imposed. Consumer education is an area where CFA and related organizations have always excelled—and where we're counting on you to continue making important contributions in the months ahead.

CFA recently announced a national campaign to build savings and wealth, particularly among low-income households. We see wealth building as the key to successful community revitalization—and to the continued growth of our national economy. I'm proud to say that the OCC will be a partner in your campaign.

Banks have traditionally played an important role in encouraging thrift and mobilizing financial assets. We will encourage national banks to reaffirm that tradition through participation in CFA's wealth-building campaign. Promoting savings and economic security are interests all Americans share. I personally look forward to working with CFA and its member organizations to achieve these and other common goals in the years ahead.

Remarks by Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency, before the Robert Morris Associates Lending and Credit Risk Management Conference, on credit underwriting practices, New Orleans, Louisiana, October 5, 1999

It is a real honor and genuine pleasure to again have the opportunity to address a Robert Morris Associates (RMA) conference, and to talk again about credit risk developments in the banking industry.

As you probably are aware, the Office of the Comptroller of the Currency (OCC) has just released its latest annual credit underwriting survey. The 1999 survey results show some positive trends from previous years' survey findings, as underwriting standards for commercial loans appear to have strengthened in several significant categories. I am happy to be able to report these improvements, but they are not cause for complacency.

The aggregate data from our underwriting survey do not tell the whole story. Beneath the statistics of the survey, there are some troubling trends that require bankers' attention. Easing continues in some important loan markets. And today's improvements cannot mitigate the overhang of credit risk created by weaker standards used in previous years. To illustrate this concern, I'll be talking about the findings of our credit-focused exam work, including our "ugly loan" review. This work provides important perspectives and depth to understanding the credit underwriting picture we see today.

Finally, I want to talk about what you, as bankers, can and should do to manage and mitigate your institutions' credit risk.

First, the results of the OCC's 1999 credit underwriting survey reflect some positive developments. For the first time in five years, the survey indicates that underwriting standards for commercial loans have strengthened, with examiners reporting that 25 percent of the surveyed banks tightened standards, compared to just 4 percent in 1998. Examiners also reported that only 13 percent of surveyed banks eased standards, compared to 44 percent in 1998. Overall, firming up was evident in syndicated/national and international lending, areas that appear to be most affected by the credit events in the fall of 1998, and in agricultural lending, which reflects low commodity prices and weakened export demand.

While we're encouraged to see strengthened underwriting standards in these areas, easing of standards persisted for some commercial products—commercial real estate and middle market lending. This is of concern because these two categories represent a large portion of bank loan portfolios. Further, a large percentage of banks reported either a mixture of easing and tightening, or no change from last year. While this indicates standards did not deteriorate, we must keep in mind that "no change" also means no improvement.

Increased pricing was the most prevalent method used to tighten standards (56 percent), followed by adjusting maximum credit availability (33 percent), increasing collateral requirements (31 percent), and strengthening loan covenants (28 percent). For those banks strengthening standards, examiners reported economic outlook and a change in risk appetite as the primary reasons.

The story has parallels on the retail side. Strengthening continued for the third successive year with slightly more banks tightening standards at 27 percent, than easing (22 percent). Products where tightening was most pronounced included consumer leasing, indirect consumer loans, credit cards, and other direct consumer loans. This seems appropriate as these products have been particularly vulnerable to rising consumer delinquency and charge-off rates in recent years.

But, among the retail products, the trend toward *easing* standards for home equity loans continued for the third successive year. By definition, a high loan-to-value home equity product represents an easing of underwriting standards, and poses greater risk of default and risk of loss in the event of default.

Those banks that strengthened underwriting standards for retail products most commonly used scorecards or pricing and, for real estate-related products, enhanced collateral requirements. Most banks tightening standards did so because of a change in risk appetite or market strategy.

Perhaps the most worrisome finding in the 1999 survey is the continued increase in credit *risk* reported for *all* commercial and retail products. For the fourth successive year, examiners report increased *inherent portfolio risk*, and they expect risk to continue to increase over the next 12 months.

Overall, the modest changes in risk tolerance and the additional emphasis on risk-based returns for commercial credit highlighted by this year's survey are certainly trends that we would all like to see continue. But, we all recognize that competitive pressures of the marketplace will continue to exert pressure, and that continued strengthening of underwriting standards in this economic environment is very challenging.

Moreover, positive news this year about underwriting standards does not erase the increased risks embedded in bank portfolios caused by four successive years of easing commercial loan underwriting standards. Nor, in the face of this year's results, can we ignore that banks shoulder increased portfolio credit risk not only as a legacy of weaker underwriting standards employed in recent years, but also as a result of the more limited credit risk selection options available to them. As the better quality loans continue to migrate to the capital markets, bankers are left to compete with other lenders for less desirable, riskier paper, which increases the risk of default.

In response to all these developments, the OCC has been implementing a series of modulated supervisory responses. These actions commenced with early warnings and advisories. Last year, when I spoke at the RMA conference in Chicago, I announced a series of calibrated actions designed to further focus examiner and banker attention on signs of deteriorating credit standards, and to highlight the need for bankers to implement risk evaluation and management systems commensurate with the increasing credit risks they held.

We instructed our examiners to identify loans with specific types of structural weaknesses in reports of examination and factor those weaknesses into their judgments about the quality of individual credits, portfolios, and the quality of portfolio risk management. Our subsequent findings give rise to concerns. Particularly at our largest banks, we found significant numbers of loans containing various structural weaknesses. The most frequently cited weaknesses include:

- Nonexistent, weak or waived covenants;
- Indefinite or overly liberal payment terms;
- Inadequate financial analysis;
- Insufficient collateral support;
- Elevated leverage ratios; and
- Repayment dependent on highly optimistic or undemonstrated cash flows.

Loans with such structural weaknesses were listed in the reports of examination or other supervisory communications with management and/or boards of directors, to ensure that they understood the nature and extent of the weaknesses disclosed and their impact on our judgments on portfolio quality and management.

Simultaneously, we formed a team of our best credit experts and instructed them to review loans across the population of our larger banks in order to better identify examples of the types of structural weaknesses that we were seeing. Unfortunately, the team had no trouble finding example after example. Based on this review—which came to be nicknamed the "Ugly Loan Project"—we developed and delivered a focused training program designed to advance the credit risk evaluation and classification skills of our examiners and clarify our expectations about how structural weaknesses should be incorporated in their judgments of credit risk in individual loans and portfolios. We also communicated these efforts to the CEOs of our largest banks.

These efforts coincided with the interagency Shared National Credit (SNC) review, which recently concluded. As you all probably know, the Shared National Credit review is jointly conducted by the OCC, Federal Reserve Board and Federal Deposit Insurance Corporation each spring. That review covers all commercial loans that are shared among three or more banks and exceed $20 million. This year's program covered approximately 30 percent of all commercial loans in the U.S. banking system.

The results of this year's SNC review have shown a marked increase in classified and special mention credits compared to 1998—an increase of roughly 70 percent in the dollar value of adversely rated loans. Fifty-nine percent of the adversely rated loans had been rated "pass" last year. Of particular concern, 14 percent of the adversely rated loans were to *new borrowers*. In other words, banks are booking *new loans* that are weak at their inception. These results reflect the increasing portfolio risk building up in the system as a result of weakened underwriting and risk selection standards.

Thus, while our most recent credit underwriting survey indicates that banks are firming up their underwriting standards, our exam work also tells us that banks have heightened embedded credit risk as a result of previous years' underwriting practices.

What should bankers be doing about this?

Let me offer some suggestions and cautions.

We all know that risk taking is inherent in the business of banking and that exceptions are an expected component of the underwriting process. We expect that you will underwrite a certain number, hopefully not too large, of loans with exceptions, but we also expect that you will have good controls over and intelligence on changes in the underwriting standards applied in your banks. This requires a system that routinely identifies the aggregate level of loans that do not meet your own underwriting criteria, segmented by portfolio and type of exception. Over the years, many bankers have resisted the need to identify and track exceptions to their risk selection and underwriting policies; however, recent studies indicate that those that do routinely track exceptions and analyze their implications for portfolio risk are among the better performing banks.

The need for such information is precisely why OCC initiated examination procedures to identify loans with structural weaknesses last year. Indeed, a number of the banks we supervise were appreciative of the detailed work performed by our examiners to identify "ugly" loans. Because examiners identified, reported, and discussed the *specific* underwriting weaknesses they found as well as their risk implications, bank management and boards were better informed and could more readily determine whether weaknesses represented isolated events or common occurrences. Bankers found examiner's feedback regarding specific underwriting weaknesses to be much more valuable than general expressions of concern about deteriorating underwriting standards. As a result, we will continue to perform these procedures in every safety and soundness examination, and we will continue to urge bankers to adopt the exception-reporting processes.

Another critical component of sound portfolio risk management hinges on the integrity of banks' own internal risk ratings. Many banks are making substantial progress, setting higher internal standards for accuracy and using credit models to back-test and cross-check the integrity of their internal ratings. We applaud these advances, but our recent examination activity, including the 1999 SNC review, has made clear that most banks have room to improve the accuracy and timeliness of their problem loan identification. Even the most sophisticated banks can improve the level of precision and reliability of distinctions among various risk levels of "pass"-rated credits. This becomes particularly imperative for the additional reason that today consideration is being given to using those internal risk ratings to set components of banks' *capital* requirements.

Unfortunately, in too many banks today, risk management advancements and management information systems (MIS) to provide timely risk analysis information to senior management and the board of directors are not being pursued with the same vigor as new business and revenue generation opportunities are being pursued. In practical terms, this is akin to ignoring termites in the foundation of your house while you're busy adding a sunroom to the second floor.

We also are concerned with the continuing relative decline in the allowance for loan and lease losses (ALLL). The average ratio of the ALLL to loans for all national banks is at its lowest level since 1986. That ratio, which was maintained *above 2 percent* for all years between 1987 and 1995, *dropped to 1.82 percent* at the end of the second quarter. That is why the OCC and the other bank regulatory agencies were extremely concerned earlier this year that certain actions and pronouncements by the Securities and Exchange Commission (SEC) last year and earlier this year would have the unintended effect of prompting unwarranted reductions in banks' reserve levels. We applaud SEC Chairman Levitt's statements clarifying the SEC's positions in this area, and we continue to strongly believe that given the higher risk inherent in bank portfolios today, it would be more appropriate for banks to be *increasing* their reserve coverage, rather than decreasing it.

One particular credit issue that caught our attention during our efforts of the past year has been the evolution of leveraged finance. Earlier this year, the OCC issued guidance to bankers advising them of the risks in leveraged lending activities and the need for more intensive risk management of these types of credits. This guidance was in keeping with our measured responses to loans with structural weaknesses, but also reflected our growing concerns with the developing trend toward higher leverage in the lending markets overall.

In that guidance, we expressed a number of concerns about the risk characteristics involved with today's leveraged lending activity. As a result of our more recent exam work, however, our concerns have particularly escalated about the increasing reliance on so-called "enterprise values" to justify collateral shortfalls common to many leveraged financing packages. The premise behind banks' reliance on "enterprise values" as a secondary source for repayment of a loan is that the borrower's business can be sold or refinanced at an amount that can be estimated based on a projected earnings capacity. But, the interagency Shared National Credit review revealed that too often documentation and analytical support for enterprise values are inadequate.

Let me give you some examples of enterprise value lending situations that concern us.

The first example is a loan made to finance an acquisition. The loan was "collateralized" by all assets of the company; however, the bank group did not value the assets, but instead relied on the estimated enterprise value. Optimistic earnings and cash flow projections never materialized. Market prices for the company's product declined and now the company is closing plants and attempting, thus far unsuccessfully, to sell assets. The acquisition price now appears inflated as does the "enterprise value" used to underwrite the loan. The potential for substantial loss to the bank group is considered very high.

Lending against valuations based on multiples of stabilized cash flow valuations can be dangerous. In another example, the borrower is a highly specialized manufacturer who sought funds for working capital and growth. Accounts receivable, inventory and fixed assets only covered 60 percent of total bank debt. The balance of the loan was supported by a stabilized cash flow enterprise valuation that provided a modest 10 percent cushion. The borrower's product has met reduced demand and increased competition. Cash flow has been severely reduced—it was inadequate to service debt in 1998 and is negative in year-to-date1999.

A final example is a consumer goods manufacturer that required re-capitalization. Although the bank group took a lien on fixed assets, their value was considered minimal. To justify the loan, the bank group relied on an enterprise value based on anticipated refinance or sale of the borrower. Unfortunately, product demand has weakened, the borrower has lost a number of key customers, and operating margins have shrunk. Cash flow is no longer adequate to service debt. The likelihood of a refinancing or sale of the company that will rescue the banks from the loan is bleak. Thus, the risk of loss is very high.

Stepping back from these particulars, this type of transaction raises several fundamental concerns:

Our first concern arises from the interdependence between the primary and secondary sources of repayment when "enterprise value" is the secondary repayment source. Enterprise value is often a calculated multiple of the borrower's historical or projected cash flow. As long as cash flow is sufficient to meet the repayment terms of the loan, there's no problem; but if cash flow does not materialize as projected, both the primary and secondary sources of repayment of the loan are at risk. The same events that endanger the first source of repayment—cash flow—also will endanger the second source of repayment—the enterprise or going concern value of the business.

Our second concern lies with loan officers' and loan review officers' apparent level of comfort with "enterprise value" as a substitute for real collateral. *"Enterprise value" is a volatile, disappearing intangible, inherently prone to vanish when it is most needed.* It is not the equivalent of hard assets and equity, properly assigned and hypothecated, valued under normal and stressed conditions, with reasonable margins at or above the loan amount. There is a reason why market professionals refer to the enterprise value component of the support for a loan as the "airball."

Our third concern in this area is with the increasingly equity-like appearance of many leveraged loan structures and whether banks are appropriately recognizing and mitigating the risks inherent in these loans. In addition to relying on enterprise values, many such loans also evidence weakened structures that diminish a bank's controls, rights, and collateral protection; extended maturities that defer meaningful repayment; and reliance on refinancing or recapitalization of the borrower as a primary source of repayment.

As we said in the leveraged lending advisory we issued earlier this year, bankers need to be able to identify the amount of leveraged loans in their portfolios, and should also be able to identify those loans where the *financing gap*—the "airball"—between the value of assigned collateral and the amount financed relies on enterprise value. Bankers should carefully analyze the assumptions used to support underlying enterprise values and be realistic in challenging those assumptions under normal and stressed conditions. Where identified financing gaps are large relative to the overall portfolio, the bank's allowance, or its capital, bankers should be developing plans to reduce these gaps in an orderly manner and to augment the allowance or capital as necessary.

Bankers must not assume that economic conditions and the capital markets will always be conducive to a refinancing or re-capitalization needed to close the financing gap when a loan comes due. I particularly hope that some bankers are not complacent because they implicitly assume that their "section 20" securities affiliate will be available to arrange a market transaction that will extract the bank from the loan. Where a bank has such an affiliate, it must not only guard against that assumption infiltrating its credit decisions, but also ensure that its conflict of interest policies are up to date and vigorously enforced. With the prospect of "financial modernization" legislation that will enhance the ability of banks and securities firms to be affiliated, it becomes essential that bankers assure that their credit decisions are not being shaded by the prospect that they will be rescued from questionable loans by their securities affiliate.

Bankers that will be successful—in good times and bad—will be the bankers who recognize risk earliest and move decisively to control it and reduce it where warranted. This can only be done with good intelligence—meaningful and accurate MIS, reliable and timely risk ratings, effective and objective internal loan review, and, most importantly, credit risk management that is adept at assessing the data, the trends, and relevant market intelligence. Bankers should be asking themselves, "Am I comfortable that my bank's culture and credit controls, including my credit risk rating system, would prevent the problems bankers suffered in the late 1980s and early 1990s?" And bank CEOs, in particular, should be asking, "Are my independent risk identification and control functions telling me what I *want* to hear, or what I *need* to hear?

Downsizing to improve efficiency ratios and efforts to achieve merger-related synergies must not reduce the effectiveness of your credit risk control processes. Given the higher risk inherent in bank portfolios today, bankers need to be more skilled at quantifying and mitigating the credit risk they undertake compared to a decade ago. Risk management advancements need to be pursued with the same enthusiasm as new business and revenue generation activities. And, risk management functions need the independence and empowerment to candid about risk in the portfolio.

You in this room, our industry's credit risk managers, face all these challenges. I urge you to take them up with vigor. Your efforts will be key to the industry's stability and success as we enter the next century.

Remarks by Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency, before the California Bankers Association Regulatory Compliance Conference, on compliance and customer relations, San Francisco, California, October 6, 1999

I was delighted to have the opportunity to meet with representatives of the California Bankers Association who visited at the Office of the Comptroller of the Currency (OCC) in Washington, D.C., earlier this week. It's really a double treat to have the opportunity now to come to San Francisco, to visit with you here.

California bankers should be proud of your state's distinguished banking history. The San Francisco mint, established in 1854, turned miners' gold and silver into U.S. currency, and was instrumental to the state's and the nation's economic development, as were pioneering banks such as Wells Fargo and Bank of America. Foreign-owned banks and foreign correspondent relationships were established early on to facilitate U.S. trade with the Pacific Rim. And today, California's financial institutions serve an ethnically diverse population and support a vibrant and diversified state economy that includes some of our nation's most advanced industries.

Just as the business of banking has evolved for California bankers—and bankers everywhere—so has the "compliance" challenge facing bankers today. I am going to talk this morning about some of the reasons for growth of this compliance challenge, why it differs qualitatively from aspects of "traditional" banking regulation, and why, today, bankers need to integrate their approach to compliance into a larger customer relations strategy.

First, let's look at how the business of banking has been evolving in recent years. Not that long ago, most banks were predominantly lenders and deposit takers. Through the 1970s, their income statements, and their profits, were dominated by interest income. Today, however, even as the dollar volume of bank credit is *growing*, banks' reliance on interest income as a revenue source is *decreasing* and we see more and more banks, of all sizes, with a significant and growing portion of their income, coming from fees and other sources of noninterest income.

Reliance on noninterest income began its dramatic growth in the 1980s and, as of June 30 of this year, accounted for just over 42 percent of operating income at commercial banks. Between June 1996 and June 1999, for example, as bank return on assets has hovered in the 1.2 percent range, the contribution of noninterest income to the bottom line has increased by 41 basis points, while interest income as a source of earnings has declined by 17 basis points. Larger banks have been particularly successful at tapping noninterest sources of income. Recent OCC statistics show that interest income and noninterest income for banks over $300 million are converging. As of June 1999, noninterest income as a percent of average assets had grown to 2.7 percent for those banks, while interest income represented a stagnant 3.4 percent of average assets. As you can see, noninterest income is the fuel propelling the record earnings of many commercial banks.

The composition of noninterest revenue is changing as well. The historical sources of fee income, such as the basic fiduciary services provided by the traditional bank trust department, are being supplemented by an expanding array of activities and products, and the fees and charges that go with them. Services, agency activities, brokerage and investment advice, insurance sales—there are many on the list. These products and services are delivered in a variety of ways—ranging from traditional brick and mortar bank facilities to the Internet.

This overall shift in the composition of bank revenues has some important implications for how bankers approach their compliance responsibilities. First, many of these noninterest revenue sources come from lines of business that are subject to very specific and detailed regulatory requirements. Regulatory compliance in this context is very different from making a loan that, all factors considered, must be safe and sound. Instead, compliance may involve highly detailed requirements about who can offer a product or service, just how and where it can be offered, and exactly what disclosures must be provided to customers. Delays of even a day in taking a required action can prove to be costly regulatory violations.

Thus, one implication of the growing importance of noninterest revenue to banks is the need to match that new business with increased attention to the often detailed and technical compliance responsibilities that accompany the businesses that produce that income. That will require new types of expertise—bank personnel appropriately trained and licensed in new areas, for example. It will also require a recognition and sensitivity to the fact that in some areas of compliance, what appear to be little mistakes can get banks into a lot of expensive and sometimes public trouble.

Second, many of the noninterest revenue-generating lines of business involve contacts with individual customers, often on an ongoing basis, although not necessarily in person. Also, many of the products and services in this category are increasingly "commoditized," so customers may obtain them from various providers and changing providers is not difficult. Thus, good *customer relations* is important for banks to *keep* this type of business. Individual consumers may not know exactly if their bank has complied with all the applicable compliance rules, but they immediately know, and have no problem reacting, when they feel they haven't been treated right by their bank. Customers can and do react by switching their business elsewhere. And if many customers of a particular institution have the same type of problem with their bank, the reputational damage from bad publicity and the loss of business can be highly detrimental.

This leads to the final point I'd like to discuss, the need for banks to integrate "compliance" with a broader strategy of customer relations and customer service. Today's consumers are increasingly sensitive, vocal, and mobile in how they react to treatment by their financial institution. A technical compliance issue can easily turn into a public relations nightmare, particularly when, as is the case with many retail products, the same mistake can affect hundreds or thousands of customers.

Also, whether a bank has complied with particular legal requirements may not be all that determines whether customers want to do business with the bank or not. A bank may be complying with what the law requires but doing something that has a significant customer relations impact. If that impact is *negative*, it is important to recall that many of the noninterest revenue-generating products and services are available from many other providers.

A prime current example of the interplay between compliance and customer relations is the issue of customer privacy. A variety of laws at the federal and state level define the "compliance" obligations of banks and other financial institutions in this area. But at the same time, American consumers are increasingly privacy conscious. Survey data bear out that, whatever laws are on the books, consumers nevertheless are concerned about threats to their privacy and about whether they have lost control of information they consider personal and private. And they worry in particular about how their confidential financial information is being used. Bankers should take notice, for this customer concern touches an increasingly important asset of the banking business—your information about your customers.

From the perspective of bankers and other financial institutions, collection and analysis of extensive data about individual transactions, preferences, and circumstances, is important for marketing purposes and can lead to products tailored to maximize their appeal to consumers. A banker recently told me about his company's goal of customizing and individualizing credit cards to appeal to a market of one. Bankers talk about the ability to anticipate and satisfy their customers' changing financial needs over the course of a lifetime. It is the availability of these opportunities that may well cement relationships between customers and their financial institutions. In short, personal information is a potent and profitable tool in a company's portfolio, and responsible use of that information can be a boon to customers.

But, as a practical matter, when customers perceive that their information is not being used in a way they expect it to be used, I doubt that they are distinguishing between a "compliance" problem and a "customer relations" failure. In fact, the same activity may involve both, and it's no solace to an institution coping with lost customers and damage to its reputation to be able to say that it got *one* of these elements right. For example, if customers are surprised and upset to learn that their bank has made available to third parties extensive information about their financial transactions—information which they assumed was confidential—they probably will not find it very satisfying to be told that the activities in question did not violate the Fair Credit Reporting Act.

As many of you may know, during the last several years, the OCC has issued guidance to the banking industry on several customer privacy-related issues. Our guidance has covered areas such as safeguarding customer data from unauthorized release to unscrupulous information brokers or "pretext callers" posing as bank customers, effective practices for meeting the notice and opt-out requirements for affiliate information sharing under the Fair Credit Reporting Act, and most recently, effective practices guidance encouraging banks to establish privacy policies and post them on their Web sites.

We are currently looking at another area—relations between banks and telemarketers. In the spirit of offering some constructive suggestions to help bankers avoid both reputation and financial damage arising from the *customer relations* implications of these activities, I would like to share with you some observations arising from this new effort.

From our work so far, we found that the majority of the largest banks and numerous other retail banks—and I'm not talking about just national banks—have relationships with third-party marketers that involve the disclosure of personal customer information. The bank normally receives a fee for use of a customer list or a percentage of the net mem-

bership fees generated by the marketer, typically 20 to 25 percent. Some banks have generated millions of dollars in revenue by providing third parties with information on millions of customers, including name and address, social security numbers, and credit card numbers. The arrangements also frequently enable the marketer to initiate a charge against customer credit cards or a debit of customer checking accounts.

Customers may not feel comforted to be told in these cases that their bank has not violated a law. Instead, they are likely to be unhappy, perhaps because they feel betrayed when they discover that their bank has provided other parties with information they consider personal and private, perhaps because they are supremely annoyed by telemarketer calls that interrupt their evenings at home, or perhaps because they see charges or fees on their bank statements that they do not recognize. None of these results foster good customer relations for the banks involved. And any of them invites legislation and more regulation that will transform what may now be a customer relations issue into a compliance obligation.

This leads me to offer several suggestions:

First, as a general matter, banks should review their information-handling practices and establish privacy policies.

- Make those policies clear and straightforward. Avoid generalities that are effectively big loopholes. Put yourself in your customers' shoes. Is the policy easy to understand?
- Adhere to them. Don't make promises you can't keep.
- If you are doing business on the Internet, make sure to conspicuously post information about how customer information is handled on your Web site.

Second, if you have arrangements with third-party marketers, consider the following measures:

- Clearly disclose to customers what information you provide for third-party marketing purposes.
- Have contractual agreements in place with third-party marketers that require them to maintain the confidentiality of any customer information to which they are provided access.
- Ensure quality control. Maintain control over credit card and checking account numbers so that you can ensure their proper usage.
- Consider other options about how arrangements with third-party marketers can be structured—such as determining your customers' interest in a particular product or service first, before providing information about the customer to a third-party marketer.
- Even where the law doesn't require it, consider giving your customers the choice to decline to have their information shared for third-party marketing purposes, *i.e.,* to "opt out" of having their information shared.

And, last but not least, *know the law*. The area of customer privacy is complex and sometimes confusing, and the "compliance" challenges are considerable.

This type of integrated "compliance"/customer relations challenge will only become more prevalent as banks diversify their product lines and seek to grow their noninterest revenue. Excellence on both scores will be key to attracting and retaining important customer segments.

Perhaps bank managers and officials involved in compliance functions haven't thought of their jobs in this light, but you really are on the cutting edge of the evolution of the banking business. Keep on doing the good work you have been doing to help insure your institutions "get it right" in the compliance area, and as you do so, try to recognize and integrate the broader, customer relations dimensions of your institution's consumer banking activities. Strive to "do the right thing" there as well.

Statement of Ralph E. Sharpe, Deputy Comptroller for Community and Consumer Policy, Office of the Comptroller of the Currency, before the Permanent Subcommittee on Investigations, U.S. Senate Committee on Governmental Affairs, on anti-money-laundering activities, Washington, D.C., November 10, 1999

Statement required by 12 USC 250: The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

I. Introduction

Madam Chairman, Senator Levin, and members of the subcommittee, my name is Ralph Sharpe and I am the deputy comptroller for Community and Consumer Policy at the Office of the Comptroller of the Currency (OCC). We appreciate this opportunity to testify on private banking activities and the vulnerability of private banking to money laundering. Money laundering, namely the movement of criminally derived funds for the purpose of concealing the true source, ownership, or use of funds, is a serious domestic and international law enforcement problem and we commend the subcommittee for focusing attention on the problems that it poses.

The Office of the Comptroller of the Currency (OCC) has a longstanding commitment to combat money laundering and to address this problem in the banks that we supervise. We share the subcommittee's belief in the importance of preventing U.S. financial institutions from being used wittingly or unwittingly to aid in money laundering. As part of our efforts to combat money laundering in private banking, we are focusing on the risks associated with the increasing size, complexity and global reach of private banking, and we have taken a number of steps to prevent the misuse of national banks for money laundering. We are also committed to working with the law enforcement community to assist in the investigation and prosecution of organizations and individuals who violate the law and engage in money laundering.

My testimony today addresses the issues you raised in your invitation letter. I will begin by describing the nature of private banking, the statutory and regulatory requirements, the vulnerabilities of private banking, techniques banks may use to protect themselves against these vulnerabilities, and the examination procedures OCC uses to address potential money laundering in all aspects of a bank's operations, including those relating to private banking. I will then discuss our review of Citibank's anti-money-laundering programs, including those carried out in the bank's private banking department. Then, I will discuss our experience in obtaining customer information from banks supervised by the OCC in foreign jurisdictions, and OCC initiatives to combat money laundering. I will conclude by addressing the Administration's National Money Laundering Strategy of 1999 and how it should enhance our ability to deal more effectively with the many challenges presented in this area.

II. Background

Broadly defined, private banking involves providing a wide range of financial services to high net-worth customers. Based on an informal 1997 OCC examiner survey of several large banks supervised by the OCC, the typical private banking customer has assets of between $1 million to $5 million available for investment. Of course, these figures may be considerably less in some markets.

Once a service provided only by European banks to a small number of wealthy clients, private banking has become a growing source of business for a number of banks in the United States, particularly larger banks. The United States has become the largest private banking market in the world and private banking services provide an important source of fee income for banks seeking to diversify and provide additional services to their customers. Continued expansion of private banking is likely as the number of high net-worth individuals grows.

Banks offer a mix of financial services under the umbrella of private banking. A relationship manager is typically the single point of contact for the private banking customer within the bank, identifying the needs of the customer and arranging for the delivery of products and services designed to meet those needs. These services often include: asset management relationships (trust, investment advisory, and investment management accounts), offshore facilities, custodial services, funds transfer, lending services, checking accounts, overdraft privileges, letter of credit financing, bill-paying services, and tax and estate planning. There is no uniform structure for the location of private banking activities within a bank. Private banking activities may be conducted within a separate unit of a bank, or may be interspersed throughout the bank according to product lines. Several national banks also operate as in-

dependent trust banks that offer private banking services exclusively.

III. Statutory and Regulatory Requirements

The Bank Secrecy Act (BSA), and its implementing regulations, is one of the primary tools the government uses to fight drug trafficking, money laundering, and a host of other crimes. Congress enacted the BSA to attempt to prevent banks and other financial institutions from being used as intermediaries for, or to hide the transfer or deposit of money derived from, criminal activity.

The reporting and record-keeping requirements of BSA regulations create a paper trail for law enforcement to follow to trace drug and other illegal proceeds to their sources. The paper trail is used by the government to help identify, detect, and investigate criminal, tax, and regulatory violations. It is used to deter illegal activity and to trace the movements of money into and out of the United States. Over the years Congress has amended the BSA to enhance its usefulness as a law enforcement tool while also reducing the regulatory burden.

In addition to the BSA, in 1986 Congress made money laundering itself a criminal activity with the enactment of the Anti–Drug Abuse Act of 1986, which included the Money Laundering Control Act of 1986 (MLCA). The law prohibits any person from knowingly engaging in a financial transaction that involves the proceeds of a specified unlawful activity.

The primary responsibility for compliance with the BSA and the anti-money-laundering statutes rests with the nation's financial institutions themselves—they represent the front lines in the fight against money laundering. National banks have significant anti-money-laundering responsibilities. As described in the "Bank Secrecy Act" booklet of the *Comptroller's Handbook for Compliance,* 12 CFR 21.21 requires national banks to establish and maintain adequate internal controls and independent testing, to designate an individual or individuals to coordinate and to monitor day-to-day compliance with the BSA, and to train responsible personnel. In addition, OCC regulations at 12 CFR 21.11 require banks to report suspicious transactions and violations of law or regulation. An adequate BSA program must enable a bank to detect and report suspicious activity, including any such activity in its private banking department.

IV. Protecting Against the Vulnerabilities of Private Banking

If a bank does not adequately maintain due diligence and compliance standards with associated internal controls, and audit and management information systems, it may be exposed to money laundering. Specific vulnerabilities associated with private banking operations include the following:

Account-Opening Procedures

Determining the identity and bona fides of high net-worth customers should generally be no more challenging to a bank than determining the identity of any other customer. However, the large dollar amounts involved, the potential for the existence of other beneficial parties, and the complications of obtaining current and accurate information regarding these matters may present unique challenges. This is particularly the case when the customer is a foreign national and the source of the funds comes from outside of the country. Moreover, the desire of the customer to maintain a high degree of confidentiality can also serve to increase the difficulty of obtaining this information.

Compensation of Relationship Managers

The high dollar volume of private banking and resulting earnings for the bank and account officers pose additional challenges and potential vulnerabilities. In some private banking units, the pressure for increased income based on new business and compensation programs based solely on quantitative factors can cause bank officers to ignore or short-cut established controls and procedures designed to protect banks from money laundering. The prestige and specialized treatment that private banking clients generally receive may also tempt a bank employee to sacrifice adherence to control procedures in favor of accommodating a client. This can also lead to a reluctance to follow up on indications of suspicious activity or to file suspicious activity reports (SARs).

Access to Account Information

U.S. banks may offer private banking services domestically or in their overseas offices. Some accounts are opened domestically, but supporting documentation relating to ownership, and background information, may be

maintained in one or more foreign jurisdictions with stringent secrecy laws. Other accounts may be opened and maintained in such jurisdictions from the outset. In either case, such accounts can present significant barriers to access to information needed to fully determine the source of funds flowing into the account or the identity of beneficial owners.

There are, however, a number of things that banks can do to protect themselves against these vulnerabilities. Many of these relate to money laundering in general; some relate more specifically to the vulnerabilities for money laundering in private banking operations. Listed below are a number of fundamental safeguards that should be employed to address and minimize the risk that a bank will be subjected to money laundering.

Effective Account-Opening Procedures

Effective account-opening policies and procedures are fundamental risk controls for private banking relationships. Effective procedures include the proper identification of the owners of the account, including beneficial owners, the sources of their wealth and their normal and expected transactions. Bank management should have specific policies for employees who approve, accept, and document new private banking accounts. To verify the legal and financial status of a business, the bank's account-opening process should require responsible bank personnel to identify the principal owners and should include a review of relevant documentation, such as articles of incorporation, partnership agreements, financial statements, credit reports, and referrals.

To the extent possible, banks should also have adequate documentation to allow for appropriate due diligence when opening accounts in jurisdictions with strong secrecy regimes. Banks should also ensure that they will have access to information during the life of an account so that it can be monitored appropriately.

Customers brought in by a third-party financial intermediary (*e.g.,* investment advisors) may require particular attention. A bank should confirm that the intermediary maintains and adheres to adequate standards to verify the identity and legitimacy of its customers. Based on the bank's assessment of the adequacy of this verification process, the bank should gauge its degree of confidence in relying on the third party's customer review process. These standards should also be applied to recently hired private banking representatives who bring in new accounts. Banks should also be cautious in establishing financial services relationships with intermediaries that refuse to provide their policies and procedures for accepting new accounts.

In short, the bank should exercise the degree of due diligence necessary to determine what types of risks are included in opening a particular account and then ensure that adequate procedures are in place to identify and control those risks.

Monitoring for High-Risk Activity

Private banking services are subject to the same anti-money-laundering requirements as any other bank relationship. Banks should monitor high-risk customer activity in order to detect and report suspicious activity in a timely manner.

Banks should evaluate accounts on a risk-grade basis, whether by type of business, geographical location, or bank product or service that may be more vulnerable to money laundering. While not all private banking accounts or relationships will fall into a higher risk category under this approach, those that do should be managed accordingly. For example, a high net-worth private banking client in the United States with an import/export business that trades with businesses located in a drug source country would clearly warrant more scrutiny than a lower net-worth demand deposit account with no international activity.

Compensation and Oversight

Banks should design compensation programs that balance quantitative and qualitative factors and that provide measurement tools to assess employee performance in both areas. They should also ensure that account relationship managers are subject to the same or a higher degree of oversight and control as managers of other areas of operation that may expose the bank to risk. Internal controls, and audit and compliance processes, should ensure that account managers operate with appropriate oversight and are subjected to periodic audit checks, and banks should include private banking relationships in their suspicious activity identification programs.

Audit for Compliance with the BSA

Banks must have an independent testing or audit function for BSA compliance, including suspicious activity reporting. Audit programs should focus on high-risk accounts and should include comprehensive transaction testing.

Training for BSA Compliance

Banks are required to train all appropriate personnel with respect to their responsibilities to comply with the requirements of the BSA. Bank training programs should provide relevant examples of money laundering in the private banking area and should discuss bank policies and procedures, liability issues, and regulatory requirements. In addition, the training program should provide for regular updates to ensure employees are kept current in bank policies and regulatory changes.

V. OCC Supervision—Controls Against Money Laundering

The OCC conducts regular examinations of national banks, and branches and agencies of foreign banks in the United States, covering all material aspects of each institution's operations, including foreign offices. These examinations include reviews for compliance with the BSA and reviews of anti-money-laundering efforts in various divisions of the banks, including lending, deposit taking, investments, fiduciary, international, wire transfer, and private banking. The OCC's "Bank Secrecy Act" booklet contains procedures designed to assess BSA compliance, as well as identify money laundering, in accordance with the mandate in section 404 of the Money Laundering Suppression Act of 1994, which required the federal banking agencies to develop enhanced examination procedures to better identify money laundering. The OCC developed these procedures in cooperation with the other federal banking agencies.

The OCC's BSA examination procedures aid our examiners in determining whether national banks have established and maintained adequate compliance programs and management information systems to detect the possibility of money laundering in all aspects of their operations, including private banking. Specifically, the OCC conducts examinations to evaluate whether national banks have adequate systems in place to: (1) detect and report suspicious activity; (2) comply with BSA requirements; (3) establish account-opening and -monitoring standards; (4) understand the source of funds for customers opening accounts; (5) verify the legal status of customers; and, (6) identify beneficial owners of accounts.

To use our resources most effectively, the OCC conducts top-down BSA/anti-money-laundering examinations in large national banks (defined as having $1 billion or more in assets). We begin with a review of policies, procedures, and internal controls, which may be followed by more in-depth procedures in areas of higher risk. This review helps determine whether the bank should implement additional policies, procedures, systems, or controls to comply with the BSA, and to prevent, detect, and report money laundering. If the OCC identifies significant weaknesses in the bank's systems, we will use our supervisory authority to ensure that the bank takes appropriate corrective measures. Similarly, if the OCC uncovers significant risks, the OCC will take steps to ensure that the bank is properly managing those risks. At the next scheduled exam, or sooner, OCC examiners will evaluate the adequacy of the bank's corrective action.

The OCC recently developed, and will soon test, expanded-scope BSA/anti-money-laundering examination procedures for private banking. These procedures specifically address employee compensation programs, account-opening standards, risk management reports, and suspicious activity monitoring of private banking activities. The procedures also focus attention on high-risk accounts, such as import/export businesses, private investment companies, accounts of foreign government officials from high-risk countries, and high-fee income accounts, concentration accounts, and nominee name accounts.

VI. OCC BSA Supervision of Citibank, N.A.

The OCC's BSA examinations of Citibank in the 1990s began with a routine examination in 1992. During this examination, the OCC advised the bank to establish and formalize a process to identify high-risk accounts, such as money service and cash-intensive businesses.

The OCC's 1994 BSA examination identified the need to improve the bank's compliance program in the private bank. Specifically, examiners found weaknesses in the bank's training program and the processes it employed to supervise its private banking account officers and ensure that the bank's "know your client" standards were being followed. The OCC recommended that the bank establish procedures to monitor the activities of relationship managers to ensure the bank's standards were not compromised through the unique client/banker relationship.

In a series of examinations conducted in 1996, OCC examiners noted progress by the bank in correcting deficiencies that had been identified previously. The bank's training program had been upgraded and the bank was in the process of implementing global policies regarding customer identification and source of wealth information. In developing its global policy, a number of revisions were made causing implementation to be re-started several times.

In 1996, in recognition of a need to improve the bank's "know your client" program and in response to an OCC

recommendation, the bank developed an account-monitoring program and a management information system report. In February 1997, using this new report, the Federal Reserve identified an account with unusual activity and referred it for further investigation to the OCC. This is the specific account identified in the subcommittee's invitation letter. The OCC conducted a detailed review of the bank's handling of the account, including a review of the activity in the account and the bank's documentation. Also, the OCC requested additional information from the bank on the customer's source of wealth. After considering this additional information supplied by the bank, the OCC concluded that a suspicious activity report was not warranted.

In early 1998, OCC provided to the bank an overall assessment of its 1997 performance. This assessment included specific comments relating to the need to improve the bank's control environment in the private bank. While progress in many areas was noted, we informed the bank that there was still a need for increased attention to the control environment. The OCC also pointed out that the OCC had identified a number of audit and control failures in the private bank that required attention.

During several domestic and overseas examinations in 1998, the OCC noted that the long process of documenting the bank's existing private banking customers was nearing completion. The bank had created a new quality control unit to ensure compliance with the bank's policies, and management was effectively responding to issues identified by the unit and the OCC. During these examinations, we found improved internal controls and adequate documentation regarding client source of wealth. However, the OCC also recommended that management implement its "global know your client" policy within established time frames, improve information regarding clients' expected transaction volumes, and formalize and implement a monitoring program for all private banking clients, in addition to the high-risk client monitoring program.

In early 1999, the OCC communicated to the bank that the control environment in the private bank, which had led to adverse publicity, had improved. The OCC acknowledged the attention this had received from senior management and the board. In addition, during several overseas examinations of Citibank offices in 1999, examiners continued to note progress in the bank's global compliance and anti-money-laundering program.

VII. OCC Experience in Obtaining Information From Foreign Jurisdictions

In most instances, the OCC has not encountered problems in obtaining from the banks that we supervise routine supervisory information domiciled in foreign jurisdictions. This type of information typically includes information which allows OCC examiners to gain an overall perspective on the safety and soundness of a bank's operations in the foreign jurisdiction, particularly the risk environment and controls that are in place. The OCC often obtains information directly from national banks through requests, on-site inspections of their offices in a host foreign jurisdiction, or through a request to a foreign supervisory authority.

For example, in April 1998, the OCC sent three examination teams to South America to conduct eight examinations. We conducted these examinations to review and analyze measures taken by national banks operating in foreign countries to minimize money-laundering risks. During these examinations, the OCC reviewed each bank's corporate and local anti-money-laundering policies and procedures and audit functions and met with host country bankers associations and central bank officials. While these examinations were limited in scope, the examiners were able to identify strengths and weaknesses in the local anti-money-laundering policies and practices of the subject banks. We are using the results of these examinations to design supervisory approaches for future examinations of overseas offices.

Obtaining account-specific information from some foreign jurisdictions has been significantly more difficult. While legitimate reasons for protecting accounts from review by outside authorities exist, the lack of access to this information is a critical problem in cases where accounts are possibly being used to commit financial crimes, including money laundering. Most foreign jurisdictions with more stringent bank secrecy laws do not consider account-specific records to be routine supervisory information. As a result, those jurisdictions typically prohibit foreign supervisory authorities from accessing customer records. The ability of the OCC to conduct on-site examinations of foreign branches varies depending on the laws of the jurisdiction. In some locations, financial secrecy and privacy laws prevent on-site OCC examinations. These jurisdictions may also impose criminal sanctions for breaches of financial privacy. In other countries, the scope of the examination is limited because examiners cannot review customer-specific records or reports. As a result, the OCC cannot always conduct comprehensive bank examinations or obtain account-specific information that is so important to money-laundering investigations.

The OCC addresses problems raised by secrecy laws in foreign jurisdictions in a number of ways. For example, the OCC expects national banks to implement internal controls, monitoring systems, and processes to reduce money-laundering risks on a company-wide basis, including in its foreign offices. When on-site reviews are not possible because of bank secrecy and financial privacy laws, the OCC reviews the corporate policy and audit functions of the

bank. When we have concerns, we require the bank to address those concerns. This may also include requiring external audits or enhanced reporting requirements.

These difficulties are also being addressed through the many initiatives on the international front that are focused on the concerns surrounding the misuse of offshore accounts for financial crime purposes. International groups such as the Financial Action Task Force and the Caribbean Financial Action Task Force have developed guidance and recommendations to help prevent and detect money laundering. Additionally, groups such as the Basel Committee on Banking Supervision and the Financial Stability Forum are taking a broader approach to dealing with secrecy jurisdictions, including the problems these jurisdictions pose with respect to obtaining the information needed for effective cross-border supervision. The G–7, also recognizing the scope and the seriousness of the problem, has developed principles for information sharing between multi-jurisdictional supervisory and law enforcement authorities. The OCC has been directly involved in all of these initiatives.

Most recently, at the request of the Basel Committee, the OCC developed a paper to help supervisors identify potentially problematic jurisdictions. The focus of the paper was on the supervisory and regulatory environment in the various countries and the ability of the jurisdictions to share information with cross-border supervisory counterparts. The paper also highlights a number of steps that home country authorities can take to remedy problems with a host authority, or with U.S. operations in that host jurisdiction.

VIII. Other OCC Initiatives Against Money Laundering

The OCC has undertaken a number of anti-money-laundering initiatives. In 1997, the OCC formed an internal task force on money laundering called the National Anti-Money Laundering Group (NAMLG). Since that time, NAMLG has embarked on several important projects. One such project involves targeting banks for expanded-scope money-laundering examinations, including private banking departments. The targeted examinations are staffed by experienced examiners and other OCC experts who specialize in BSA compliance, money-laundering, and fraud examinations. The banks are selected for examination by using a filtering process that includes, among other considerations: (1) locations in high-intensity drug-trafficking areas; (2) excessive currency flows; (3) significant private bank activities; (4) unusual suspicious activity reporting patterns; (5) unusual large currency transaction reporting patterns; and (6) fund transfers or account relationships with drug source countries or countries with stringent bank secrecy laws.

In addition, the OCC is working with the Financial Crimes Enforcement Network (FinCEN) to further enhance our ability to identify banks at risk for money laundering. For example, the OCC's fraud and BSA/anti-money-laundering specialists now have on-line access to the primary databases at FinCEN. These databases house currency transaction reports, suspicious activity reports and other BSA information, as well as Federal Reserve cash flow data (currency flows between the Federal Reserve and depository institutions). This on-line access allows the OCC to analyze data to identify banks with unusual currency or suspicious-report activity. The OCC is also working with FinCEN to utilize the agency's "artificial intelligence" capabilities to facilitate our targeting program.

The OCC also conducts targeted examinations based on law enforcement leads. For example, if a U.S. attorney's office advises the OCC that a national bank may be involved in a money-laundering scheme, the OCC will send a team of examiners to assess the situation. If, through the examination process, OCC identifies weaknesses in the bank's BSA compliance program or other problems within the OCC's supervisory or enforcement authority, the agency will direct the bank to take appropriate corrective action. In addition, if the examiners discover information that may be relevant to a possible criminal violation, the OCC will direct the filing of a suspicious activity report and provide relevant documents, information, and expertise to the receiving law enforcement agency.

This targeting effort resulted in 15 targeted exams from late 1997 to 1999. Six of these examinations involved private banking. Plans are under way to conduct at least nine more in 2000. In addition to targeting examinations throughout the United States, a special training and targeting examination project was conducted in our Southeastern District during 1999. This project provided examiners with intensive BSA/anti-money-laundering training immediately followed by nine expanded-scope examinations. The examinations resulted in a number of corrective actions to prevent money laundering. The OCC's Northeastern District plans to conduct a similar initiative in the first quarter of 2000.

OCC district offices have also formed task forces to interact with the NAMLG and to attack the problem of money laundering. The overall purpose of the district-based initiatives is to implement a more proactive approach on the local level and to foster new ideas and programs for supervising compliance with the BSA and the money-laundering statutes by

- Identifying and examining high-risk banks;
- Working with local law enforcement and regulatory agencies;

- Providing examiner training;
- Developing and sharing "best practices" examination procedures; and
- Developing and implementing new anti-money-laundering initiatives.

In addition, the OCC has assigned a BSA/money-laundering specialist to the Treasury Department's Colombian Black Market Peso Exchange (CBMPE) Working Group. The group meets on a biweekly basis to develop and implement operational strategies against money laundering based in the CBMPE. CBMPE is a high-priority item of the National Money Laundering Strategy for 1999. So far, the OCC has

- Trained examiners on money-laundering schemes common to CBMPE;
- Distributed a FinCEN advisory on CBMPE to national banks; and
- Developed and field-tested examination procedures to detect CBMPE schemes in national banks.

With the support of NAMLG, the OCC also has enhanced its training to detect money laundering, including in private-banking accounts. The training instructs examiners to focus on unusual funds transfer activity to or from known offshore money-laundering havens. This training was provided in all of the OCC districts during 1999.

NAMLG is also chairing a working group with other regulatory and law enforcement agencies to develop an interagency training curriculum to heighten awareness of money-laundering schemes and to provide case studies of actual examinations that led to the filing of suspicious activity reports and criminal investigations. The interagency group plans to pilot the training program in July 2000.

Other activities of NAMLG include:

- Analyzing money-laundering trends and emerging issues;
- Sharing money-laundering intelligence with OCC district offices;
- Promoting cooperation and information sharing with national and local anti-money-laundering groups, law enforcement agencies, other bank regulators and the banking industry; and
- Working with law enforcement to develop better means of promoting feedback to financial institutions on the effectiveness of SAR reporting and law enforcement's follow-up.

Overall, through its examination programs, cooperative efforts with others, both domestically and internationally, and NAMLG initiatives, the OCC continues to demonstrate its commitment to combating money laundering.

IX. Additional Initiatives

As you know, the Administration recently released its congressionally mandated National Money Laundering Strategy for 1999. The strategy includes a number of specific objectives aimed at enhancing the ability of law enforcement and the regulatory agencies to combat money laundering. These include: (1) convening a high-level working group of federal regulators and law enforcement officials to examine what guidance would be appropriate to enhance bank scrutiny of certain transactions or patterns of transactions in potentially high-risk accounts; (2) the federal bank supervisory agencies conducting a review, in cooperation with the Treasury Department, of existing bank examination procedures relating to prevention and detection of money laundering at financial institutions; and, (3) proposing legislation to *bolster* domestic and international enforcement powers to combat money laundering.

The OCC is committed to working closely with all participants in these and other legislative and regulatory efforts over the coming months and years to help meet the goals and objectives of the strategy.

X. Conclusion

The OCC is committed to preventing national banks from being used to launder the proceeds of the drug trade and other illegal activities. We recognize the potential vulnerability of private banking to money laundering, and our supervisory efforts are aimed at ensuring that banks employ control procedures to reduce that vulnerability. We stand ready to work with Congress, the other financial institution regulatory agencies, the law enforcement agencies, and the banking industry to continue to develop and implement a coordinated and comprehensive response to the threat posed to the nation's financial system by money laundering.

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Confirms that a jointly owned insurance agency of a national bank may sell insurance through satellite offices of the agency in the state of New York, in addition to the agency's "place of 5,000" location	873	166
Confirms that a wholly owned subsidiary of a national bank may sell insurance through satellite offices of the agency in the state of New York, in addition to the agency's "place of 5,000" location	874	170

Interpretive Letters

866—October 8, 1999

12 USC 92A

Julius L. Loeser
Senior Vice President and Deputy General Counsel
Comerica Incorporated
500 Woodward Avenue, 33rd Floor
Detroit, Michigan 48226

Re: Authority of a National Bank to Market Fiduciary Services to, and Act as Fiduciary for, Customers in Various States

Dear Mr. Loeser:

This replies to your letter of August 20, 1999, in which you request, on behalf of Comerica Bank & Trust, National Association, Ann Arbor, Michigan (the "Bank"), the opinion of this office concerning the extent to which federal law preempts state restrictions on the ability of the Bank to engage in certain fiduciary activities. As described more fully below, the Bank, after receiving permission to exercise fiduciary powers through its Michigan offices, would like to solicit customers that are located in other states and serve those customers by acting as trustee for trusts and by maintaining trust representative offices in those states. You note that various state laws purport to prohibit or restrict the Bank from engaging in these activities. In some cases, the state law would require a state license or approval for the Bank to market its services and provide fiduciary services for customers in those states. In other cases, the state law would impose reciprocity or pledging requirements in addition to those provided for in 12 USC 92a. You have concluded that federal law preempts these state laws. For the reasons expressed herein, we concur.

I. Background

The Bank has entered into a contractual relationship with a brokerage firm (the "Broker") pursuant to which the Bank would solicit trust business through existing offices of the Broker throughout the United States and then act as trustee for trusts involving customers in various states. The Broker offers a program called the Personal Trust Account ("PTA"), which, in essence, is a retail brokerage account that holds cash, securities, and similar financial products and that provides a variety of trust services to assist in meeting a customer's estate, investment, and tax planning goals. Under the program, representatives of the Broker will advise customers of the availability of the Bank's trust services in connection with a PTA, and will refer the customers to the Bank. A Bank trust representative will correspond with the prospect and, if successful in gaining the prospect's business, open a Bank trust account. Most communications between the Bank and the customer will be by telephone or through the mail. On occasion, Bank employees may meet with a customer at the customer's place of business or home or at an office of the Broker. Joint marketing programs may also be conducted at offices of the Broker or at other locations in various states.

The responsibilities of the Bank, as trustee, are set forth in a trust agreement that is separate from the Broker's account agreement with the customer. The Broker will not execute trust documents on behalf of the Bank. Rather, the Broker will forward trust agreements to the Bank for review and acceptance. The Bank will retain the right to decline any appointment with respect to a particular trust agreement.

The Bank will decide whether to accept the appointment and will execute the trust agreements only at its Michigan offices. Similarly, the Bank will make decisions about the investment or distribution of trust assets and will conduct the daily administration of trust accounts only at its Michigan offices. The Bank, as the named fiduciary, will collect and hold in custody all assets of the trust and will act as trustee in all respects with regard to discretionary actions.[1]

In certain situations, the Bank may open a trust representative office outside of Michigan. The trust representative offices will serve as a liaison between the Bank and trust customers; they will not perform core fiduciary functions. The Bank's representatives at the trust representative offices solicit new fiduciary accounts on behalf of the Bank, transfer documents to the Bank, provide information to clients regarding their accounts, and answer questions. Neither daily administration of trust accounts nor acts of discretion with respect to the trust accounts are conducted at the trust representative offices.

The Bank has requested the OCC's views on whether state laws that would impair or impede the Bank's ability to engage in the activities described above are preempted by federal law. In responding to this request, we review in section II.A of

[1] In some instances, the Bank may utilize an employee of the Broker or independent money managers to provide investment advisory or management services, subject to the Bank's oversight and review. The Bank may utilize the Broker as a custodian or subcustodian for holding some of the financial assets in the trusts, where permitted by the trust instrument or applicable law.

this letter the standards that govern the preemption of state laws with respect to national banks. We then discuss in sections II.B and II.C the scope of national bank powers under section 92a and the application of section 92a to the Bank's proposed activities. In section II.D, we apply the preemption standards to laws of the type described in your letter and conclude that they are preempted.

II. Analysis

A. National banks are federal instrumentalities. State laws that frustrate the purposes for which these federal instrumentalities were created are preempted.

National banks are brought into existence under federal legislation, and are federal instrumentalities subject to the paramount authority of the United States.[2] Thus, it is well established that any state law limiting the operation of national banks is preempted by federal law and invalid under the Supremacy Clause of the United States Constitution (U.S. Const. art. VI, cl. 2 (the Supremacy Clause)) if the state law "expressly conflicts with the laws of the United States, and either frustrates the purpose of national legislation or impairs the efficiency of [national banks] to discharge the duties for the performance of which they were created." [3]

Congress may confer power on the states to regulate national banks or may retain that power.[4] The question is whether Congress, in enacting the federal law, intended to exercise its constitutionally delegated authority to set aside the laws of the state.[5] Absent explicit preemption language, courts must consider whether the federal statute's "structure and purpose" reveal a clear preemptive intent.[6]

Federal law may preempt state law where it is in "irreconcilable conflict" with state law.[7] This may occur where compliance with both statutes is an impossibility.[8] Preemption is also appropriate where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[9]

When state and federal laws are inconsistent, the state law is preempted regardless of the motive or subject of the state law. As the Supreme Court noted in *Gade* v. *National Solid Wastes Management Ass'n,* 505 U.S. 88, 103 (1992) in holding that a state law designed to promote worker safety was preempted:

> In determining whether state law "stands as an obstacle" to the full implementation of a federal law, *Hine* v. *Davidowitz,* 312 U.S., at 67, "it is not enough to say that the ultimate goal of both federal and state law" is the same, *International Paper Co.* v. *Ouellette,* 479 U.S. 481, 494 (1987). "A state law also is pre-empted if it interferes with the methods by which the federal statute was designed to reach th[at] goal." *Ibid.;* see also *Michigan Canners & Freezers Assn., Inc.* v. *Agricultural Marketing and Bargaining Bd.*, 467 U.S. 461, 477 (1984).

See also Morales v. *Trans World Airlines, Inc.,* 504 U.S. 374 (1992) (holding that a state statute allegedly designed to prevent market distortion caused by false advertising of airfares was precluded by federal law preempting state regulation of the rates, routes, or services of air carriers).

In the context of preemption of state laws affecting national banks, the Supreme Court's analysis is informed by the unique purposes for which the national banking system was created. Through the national charter, Congress has established a banking system intended to be both nationwide in scope and uniform in character. As stated by the Supreme Court in *Easton* v. *Iowa,* 188 U.S. 220, 229 (1903), Federal legislation affecting national banks "has in view the erection of a system extending throughout the country, and independent, so far as the powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states." *See also Davis, supra,* at 283 ("This freedom from State control over a national bank's powers protects national banks from conflicting local laws unrelated to the purpose of providing the uniform, nationwide banking system that Congress intended."); *Farmers' & Merchants National Bank* v. *Dearing,* 91 U.S. 29, 33 (1875) ("National banks organized under [the National Bank A]ct are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end.").

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[2] *Davis* v. *Elmira Sav. Bank,* 161 U.S. 275 (1896); *M. Nahas Co., Inc.* v. *First National Bank of Hot Springs*, 930 F.2d 608, 610 (8th Cir. 1991).

[3] *Cohen* v. *Virginia,* 19 U.S. (6 Wheat.) 264, 414 (1821) (Marshall, C.J.); *Davis*, 161 U.S. at 283.

[4] *Independent Comm. Bankers Ass'n of South Dakota, Inc.* v. *Board of Governors of the Federal Reserve System*, 820 F.2d 428, 436 (D.C.Cir. 1987).

[5] *California Fed. Sav. & Loan Ass'n* v. *Guerra,* 479 U.S. 272, 280-281 (1987).

[6] *Jones* v. *Rath Packing Co.,* 430 U.S. 519, 525 (1977).

[7] *Rice* v. *Norman Williams Co.,* 458 654, 659 (1982).

[8] *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142-143 (1963).

[9] *Barnett Bank of Marion County* v. *Nelson,* 517 U.S. 25, 134 L. Ed. 2d 237, 244 (1996) (quoting *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941)).

The Supreme Court has consistently relied on the special federal purpose of national banks as an important reason for concluding that national bank powers normally are not limited by state law. In *First National Bank of San Jose* v. *California*, 262 U.S. 366 (1923) (*"FNB San Jose"*), for instance, the Supreme Court stated "[A]ny attempt by a state to define [national banks'] duties or control the conduct of their affairs is void, whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation, or impairs the efficiency of the bank to discharge the duties for which it was created." *Id.* at 369. Applying this principle to the authority of national banks to accept deposits, the Court in *FNB San Jose* observed that "Plainly, no state may prohibit national banks from accepting deposits, or directly impair their efficiency in that regard." *See also Marquette National Bank* v. *First of Omaha Corp.,* 423 U.S. 299, 307 (1978) (finding that a national bank is an instrumentality of the federal government, created for a public purpose, and as such necessarily is subject to the paramount authority of the United States).

Preemption of state laws affecting national banks may occur—notwithstanding that compliance with both state and federal laws is possible—if the state laws "infringe the national banking laws or impose an undue burden on the performance of the banks' functions."[10] In *Fidelity Federal Savings and Loan Association* v. *de la Cuesta*, 458 U.S. 141 (1982), the Supreme Court found that a state law that prohibited the use of due-on-sale clauses in loan instruments was preempted by a federal regulation that expressly granted to federal savings and loans the power to include such clauses in loan instruments, even though federal law merely permitted federal savings and loans to include due-on-sale clauses in their contracts.

B. Under 12 USC 92a, the Bank is authorized to market its trust services to, solicit trust business from, and act as trustee for, customers in all states.

Pursuant to section 92a, a national bank may act in certain fiduciary capacities, subject to the law of the state where the bank is located. In the case of the eight capacities specifically enumerated in section 92a(a),[11] a national bank may engage in these capacities provided that the law of the state in which the bank is located does not prohibit competitors of national banks from engaging in these capacities. A national bank also may engage in any other fiduciary capacity in which national banks' competitors may engage under the laws of the state where the national bank is located.

As noted above, section 92a(a) authorizes a national bank to act in fiduciary capacities, with the extent of permissible capacities being determined in part by the laws of the state where the bank is located. When a national bank is acting in a fiduciary capacity in a given state, section 92a also makes laws of that state governing the deposit of securities, execution of bonds, and taking of oaths applicable to the bank.[12] In each of these cases, the references to state laws occur in conjunction with references to, or descriptions of, the national bank's acting in a fiduciary capacity. In light of this context, we conclude that for purposes of section 92a a national bank is "located" in a state where it acts in a fiduciary capacity.[13] Accordingly, in order to determine where a national bank is located under section 92a (and thereby know which state's laws apply), one must determine where the bank is acting in a fiduciary capacity.

Section 92a does not explicitly address what level of contact is necessary for the bank to be deemed to be acting in a fiduciary capacity within the meaning of the statute. In our view, the best construction of the statute is to determine that location by looking to the place at which the bank performs core functions of a fiduciary. These core functions include accepting the appointment, executing the documents that create the fiduciary relationship, and making decisions regarding the investment or distribution of fiduciary assets.[14]

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[10] *Anderson National Bank* v. *Luckett*, 321 U.S. 233, 248 (1944).

[11] Section 92a(a) states:

> The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

[12] *See* 12 USC 92a(f) (securities deposit and bond requirement) and 92a(g) (officers' oath or affidavit requirement). Section 92a(i) also requires a national bank to comply with minimum capital requirements that apply to state institutions.

[13] A fundamental principle of statutory construction is that the meaning of a word is informed by its context. Sutherland Stat. Const. § 46.05 (5th ed. 1992). As the Supreme Court has often explained, "We consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme. The meaning of statutory language, plain or not, depends on context." *Bailey* v. *U.S.*, 516 U.S. 137, 145 (1995). Thus, in interpreting the language of a statute, courts do not look at one provision in isolation, but rather look to the entire statutory scheme for clarification and contextual reference. *U.S.* v. *McLemore*, 28 F.3d 1160, 1162 (11th Cir. 1994).

[14] Because the Bank will engage in all the activities that are considered the key fiduciary functions only at its Michigan offices, we need not determine here whether all or only some of them are the key functions. Similarly, since all the activities are performed in one state, we need not address how to determine the state in which the bank acts in a fiduciary capacity in that context.

Conversely, the determination of where the bank acts in a fiduciary capacity should *not* look to every location where customers reside or where trust assets are located, or be based on places at which the bank engages in other non-fiduciary activities primarily for the purpose of establishing or maintaining customer relationships. Thus, core fiduciary functions do not include advertising, marketing, or soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer (*e.g.*, forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); or simply inspecting or maintaining custody of fiduciary assets.

The conclusion that "acting in a fiduciary capacity" includes only a central range of activities is consistent with analysis employed by the courts and the OCC in other situations where a federal law borrows from, or refers to, state law. For example, in the context of identifying the state in which a national bank is located for purposes of determining the allowable interest rate it may charge on loans under 12 USC 85, the Supreme Court rejected the view that various business contacts that were part of the lending relationship were sufficient to make the bank "located" in a state for purposes of section 85, because the rejected approach would make the meaning of term "located" too uncertain.[15] Similarly, under the well-established treatment of lending for branching purposes, where a national bank "makes a loan" for purposes of 12 USC 36 depends on certain key bank activities, not on the many types of customer contacts that may occur in the loan transaction. While establishment of a branch in a particular location requires OCC approval, once established, the branch may make loans to,[16] or accept deposits from, customers anywhere, including states other than where the branch is located. Similarly, national banks' authority to sell insurance pursuant to 12 USC 92 is statutorily tied to its location in a "place of 5,000," although a bank may market to customers residing elsewhere.[17] Thus, to infer a geographic limit in the context of fiduciary activities on where a national bank may market a service it is authorized to perform, or on where customers of a particular bank product or service may live or work, would be fundamentally inconsistent with how national banks are permitted to exercise other authorized powers.

Importantly, our approach does not mean that national banks may engage in fiduciary activities free from state-imposed restrictions. Rather, this approach simply identifies *which* state's laws will apply. Absent this certainty, national banks would be unable to know whether their contacts with a state were sufficient to alter the outcome of which state's law applied. This would impose an enormous burden on the ability of national banks to exercise fiduciary powers, contrary to the purposes for which the national banking system was created and in the absence of any indication in section 92a that such a result is intended.

Once a national bank is authorized under section 92a to act in a fiduciary capacity, section 92a imposes no limitations on where the bank may market its services or where the bank's fiduciary customers may be located. There is no evidence of a congressional intent to limit a national bank's exercise of fiduciary powers only to customers based in states in which the bank is exercising its fiduciary capacities, nor is it reasonable to infer such a limitation. Moreover, a grant of fiduciary powers to a national bank necessarily includes the

[15] *See Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp.*, 439 U.S. 299, 311-13 (1978). *See also* OCC Interpretive Letter No. 822 (Feb. 17, 1998), *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-265.

[16] *See, e.g., Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp.*, 439 U.S. 299 (1978) (national bank from one state lending to customers in another state may charge federally authorized interest rate without regard to law of customers' state); *Bank of America National Trust & Savings Ass'n* v. *Lima*, 103 F. Supp. 916, 917-18 (out-of-state national bank's ability to lend in a state does not depend on state's permission; state cannot require national banks to register as foreign corporations); *Indiana National Bank* v. *Roberts*, 326 So.2d 802, 803 (Miss. 1976) (same, citing other cases).

[17] *See Independent Insurance Agents of America, Inc.* v. *Ludwig*, 997 F.2d 958 (D.C. Cir. 1993), *aff'g* 736 F. Supp. 1162 (D.D.C. 1990), *on remand on other grounds from* 508 U.S. 439 (1993). *See also NBD Bank, N.A.* v. *Bennett*, 67 F.3d 629 (7th Cir. 1995); *Shawmut Bank Connecticut* v. *Googins*, 965 F. Supp. 304 (D. Conn. 1997); OCC Interpretive Letter No. 753 (Nov. 4, 1996), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107. This is consistent with the analysis suggested by the Conference of State Bank Supervisors for identifying the state in which an entity is acting in a fiduciary capacity. *See* Conference of State Bank Supervisors (CSBS), *Statutory Options for Multistate Trust Activities* (March 1997) at third page of unpaginated Introduction and 1.002(a)(28) and (37), 1.102(m), 2.101-2.106 and 2.201-2.202 of the model Multistate Trust Institutions Act (distinguishing three different tiers for an out-of-state bank's fiduciary activities in a host state—(1) marketing and soliciting without an office in the state, (2) a trust representative office, and (3) a full service trust office—of which only the full service trust office "acts in a fiduciary capacity" in the host state). Several states have adopted similar provisions. *See*, *e.g.*, 6 Okla. Stat. 1701 *et. seq.* (1998) (legislation based on CSBS Model); Wis. Stat. Ann. 223.12(3) (authorizing out-of-state banks to have trust representative offices that "do not act in a fiduciary capacity"); Minn. Stat. 48.475 and 48.476 (authorizing trust service offices and representative trust offices for state trust institutions; a representative trust office engages in a trust business other than specified activities that are "acting as a fiduciary").

power to advertise its fiduciary services to customers.[18] This incidental power extends to all customers, regardless of their location.

A national bank may use a trust office to facilitate its marketing efforts, provided the bank complies with applicable filing requirements set out in 12 CFR 5.26. A national bank also may use a trust representative office (*i.e.*, an office that does not act in a fiduciary capacity) to market its fiduciary activities. The establishment of trust representative offices requires no filing to the OCC. Assuming that a trust office or trust representative office does not receive deposits, pay checks, or lend money, it will not be considered a "branch" as that term is defined in 12 USC 36(j),[19] and, therefore, will not be subject to the requirements and limitations imposed by section 36 or to the state laws referenced in section 36.[20]

In summary, the fiduciary capacities in which a national bank may act, and certain other provisions in section 92a governing its operations, are determined by reference to the law of the state in which the bank acts in a fiduciary capacity, but the bank may advertise and solicit customers for its fiduciary business from other states. The bank also may operate trust representative offices nationwide, in which it does *not* perform fiduciary activities, to facilitate performance of its fiduciary business.

C. The Bank acts in a fiduciary capacity only in Michigan.

Applying the section 92a statutory framework to the Bank's proposal, the Bank acts in a fiduciary capacity only in Michigan, because it conducts all the core fiduciary functions only at its Michigan offices. The Bank reviews proposed trust appointments and decides whether to accept them or not at its Michigan offices. It executes the trust agreements and other trust documents at its Michigan offices. The Bank makes discretionary decisions about investment or distribution of trust assets at its Michigan offices. It also conducts the daily administration of trust accounts only at its Michigan offices.

In states other than Michigan, the Bank markets its services and solicits business through advertising, telephone, mail or electronic communications, referrals from Broker employees or others, and/or marketing presentations by Bank employees. It also interacts with potential or existing customers, answering questions or providing information about accounts through telephone, mail, or electronic communication or personal visits by Bank employees. In states in which it would have trust representative offices, it performs these incidental activities at the representative offices. However, none of the core fiduciary activities described above would be performed at the representative offices.

Michigan, therefore, is the only state in which the Bank acts in a fiduciary capacity (its "capacity" state). Thus, Michigan is the only state whose law is incorporated in the provisions of section 92a and 12 CFR Part 9 that make state law applicable to national banks' conduct of fiduciary business. Michigan permits its state institutions that compete with national banks to act in the fiduciary capacity of trustee. *See, e.g.,* Mich. Comp. Laws 487.181. Therefore, the Bank is authorized under section 92a(a) to act as trustee at its Michigan offices, including soliciting business from, and acting as trustee for trusts involving, customers residing in other states and to have trust representative offices in other states.[21]

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[18] It is well established that a national bank's power to engage in an authorized activity includes the power to advertise its services. *See, e.g., Franklin National Bank of Franklin Square* v. *New York,* 347 U.S. 373 (1954); *Bank One, Utah, N.A.* v. *Guttau,* No. 98-3166 (8th Cir. September 2, 1999). OCC Conditional Approval No. 221 (December 4, 1996); OCC Interpretive Letter No. 494 (December 20, 1989) (national bank incidental powers).

[19] *See, e.g., Clarke* v. *Securities Industry Association,* 479 U.S. 388, 392 n.2 (1987); *Cades* v. *H & R Block, Inc.,* 43 F.3d 869, 874 (4th Cir. 1994), *cert. denied,* 515 U.S. 1103 (1995); *Dep't of Banking & Consumer Finance of Missouri* v. *Clarke,* 809 F.2d 266, 270 (5th Cir.), *cert. denied,* 483 U.S. 1010 (1987).

[20] *See* Interpretive Letter No. 695, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-010 (December 8, 1995) (IL 695), at 4, in which the OCC concluded that a national bank office that provided only fiduciary services would not be subject to the McFadden Act (12 USC 36). The reasoning of, and conclusions reached in, IL 695 are incorporated herein by reference. *See also Bank One, Utah* v. *Guttau*, No. 98-3166, slip. op. at 7, 9 (8th Cir. September. 2, 1999) (stating, after finding that automated teller machines (ATMs) are excluded from the definition of "branch" in section 36(j), "By excluding ATMs from the definition of 'branch,' Congress ... signaled its intention to foreclose the states from imposing location and approval restrictions on a national bank's ATMs. * * * Congress has made clear in the [National Bank Act] its intent that ATMs are not to be subject to state regulation....").

[21] The OTS has reached the same conclusions under section 5(n) of the Home Owners' Loan Act ("HOLA"), 12 USC 1464(n), which authorizes federal savings associations to engage in fiduciary powers. *See, e.g.,* OTS Chief Counsel Opinion (August 8, 1996), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83-102 ("OTS August 1996 Opinion"); OTS Chief Counsel Opinion No. 94/CC-13 (June 13, 1994), *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 82,814 ("OTS June 1994 Opinion"). *See also* OTS Chief Counsel Opinion (January 4, 1999); OTS Chief Counsel Opinion (July 1, 1998), *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83-272; OTS Chief Counsel Opinion (June 21, 1996); OTS Chief Counsel Opinion (March 28, 1996), *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83-100 ("OTS March 1996 Opinion"). The OTS June 1994 Opinion involved trust activities by a federal thrift similar to those in the Bank's proposal. Section 5(n) of HOLA was originally modeled on section 92a, and was intended to give federal savings associations the same fiduciary powers as national banks. *See* Pub. L. No. 96-221, 403, 44 Stat. 146, 156; S. Rep. No. 368, 96th Cong., 2d Sess. 12-13, 23 (1980).

D. The state laws described by the Bank, other than Michigan law, are preempted because they conflict with the Bank's authorization to exercise fiduciary powers granted pursuant to section 92a.

You have asked whether federal law preempts the laws of states other than Michigan that purport to prohibit the Bank from engaging in the fiduciary activities described here, require state license or approval, or impose operating requirements beyond those in section 92a. You have provided examples from five states of the types of laws that you believe are preempted by federal law, although you believe that similar laws in jurisdictions other than the ones you have cited also are preempted. We agree.

As noted, section 92a does not impose any geographic limit on the places where a national bank may market its fiduciary services or on the location of the bank's fiduciary customers, nor does it condition the exercise of fiduciary powers on compliance with state laws that purport to impose licensing or operating requirements on national banks. Thus, state laws are preempted to the extent they impermissibly conflict with the Bank's authority to solicit trust business or act as trustee in trust appointments for customers in those states or from having trust representative offices in those states.

Illustrative of the types of laws that you believe are preempted is a statute in Utah[22] that completely prohibits the Bank from engaging in fiduciary activities. A statute in Virginia[23] prohibits a common way of doing trust business (*i.e.,* soliciting business and acting as a trustee without having an office in the state). Statutes in Virginia, Wisconsin, New Jersey, and Minnesota[24] impose a reciprocity condition on an out-of-state bank's authority to conduct trust business in the state or to have trust offices in the state. Statutes in Wisconsin and Minnesota[25] could have the effect of prohibiting an out-of-state bank from using trust representative offices to conduct its trust business in those states. To the extent that these statutes conflict with the authority to engage in fiduciary activities under section 92a, they are, in our opinion, preempted.[26]

Similarly, state laws that would require the Bank to obtain a certificate of authority, approval, or other license requirement from the state before soliciting and engaging in the proposed trust arrangements with customers in those states[27] conflict with the Bank's federal authority under section 92a, and so are preempted. If a national bank is authorized under federal law to exercise a granted power, it does not require the additional permission of a state to exercise that power. To conclude otherwise would run counter to the paramount authority of the federal government over national banks,[28] including the OCC's exclusive visitorial power over national banks.[29]

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[22] Utah Code Ann. § 7-5-1(1)(d) and 7-5-1(2) (out-of-state banks, including national banks, may not engage in trust business in Utah, unless the bank is also authorized to engage in business as a depository institution in Utah)

[23] Va. Code Ann. §§ 6.1-5 and 6.1-32.35 (no out-of-state bank, except one with a branch or a trust office in Virginia, may engage in banking business or trust business in Virginia).

[24] Respectively, Va. Code Ann. § 6.1-32.39; Wis. Stat. Ann. § 223.12(1); N.J. Stat. Ann. § 17:9A-316(B) (*see also* 1999 N. J. Laws ch. 159, § 3 (adding new section) (approved July 8, 1999)); and Minn. Stat. § 303.25 (Subdivision 1).

[25] Respectively, Wis. Stat. Ann. § 223.12(3) and Minn. Stat. § 303.25(Subdivision 5) (the Minnesota provision regarding trust representative offices imposes a reciprocity requirement).

[26] It should be noted that some national banking laws, including section 92a, incorporate elements of state law and make them part of the federal law applicable to national banks, and so preemption analysis in those situations is different. However, the determination of what elements of state law are incorporated is a question of federal law. Once it is determined, other parts of state law—even on the same subject matter—are not incorporated and so are subject to the usual national bank preemption analysis. Cf. *Independent Bankers Ass'n of America* v. *Clarke,* 917 F.2d 1126 (8th Cir. 1990); *Department of Banking & Consumer Finance* v. *Clarke*, 809 F.2d 266 (5th Cir.), *cert. denied*, 483 U.S. 1010 (1987). In these decisions, state laws that applied the state's commercial bank branching laws to national banks were found to conflict with the federal branching authority of the McFadden Act, even though the McFadden Act refers to state law. Similarly, section 92a refers to state law but does not include *all* state law governing fiduciary activities.

[27] Respectively, Va. Code Ann. §§ 6.1-32.38, 6.1-32.40, and 6.1-32.41; Wis. Stat. Ann. § 223.12(4); N.J. Stat. Ann. §§ 17:9A-316(B) and 17:9A-322.

[28] *See, e.g. Burnes National Bank* v. *Duncan,* 265 U.S. 17, 24 (1924) (the authority of Congress to grant national banks fiduciary powers in section 92a is independent of the states, "as otherwise the State could make it nugatory"). Courts also have held that routine state registration requirements, such as obtaining a certificate of authority as a foreign corporation, are not applicable to national banks. *See, e.g., Bank of America National Trust & Savings Ass'n* v. *Lima,* 103 F. Supp. 916, 918, 920 (D. Mass. 1952) (in case where out-of-state bank lent to customer in state, state statute requiring foreign corporations to qualify to do business held not applicable to national banks); *Indiana National Bank* v. *Roberts,* 326 So.2d 802, 803 (Miss. 1976) (same); *First National Bank of Tonasket v. Slagle,* 5 P.2d 1013, 1914 (Wash. 1931) (same); *State National Bank of Connecticut v. Laura,* 256 N.Y.S. 2d 1004, 1006 (Cty. Ct. 1965) (same).

[29] A state requirement that a national bank obtain state approval or license to exercise a power authorized under federal law is an assertion by the state that it has supervisory or regulatory authority over national banks. This is in direct conflict with federal law providing that the OCC has exclusive visitorial powers over national banks except as otherwise provided by federal law. 12 USC 484; 12 CFR. 7.4000(b). *See generally Guthrie* v. *Harkness,* 199 U.S. 148, 159 (1905) (states may not exercise right of visitation over national banks).

This conclusion is supported by the language of section 92a. Paragraph (a) of that section expressly delegates to the OCC the authority to determine whether a national bank may engage in fiduciary activities, while paragraph (i) lists considerations to be used by the OCC in acting on applications for fiduciary powers. The references to state law in section 92a are limited to ensuring that certain restrictions apply to national banks if they apply to others. These include, for instance, provisions governing the pledge of securities (section 92a(f)) and officials' oaths and affidavits (section 92a(g)). The fact that Congress incorporated state law requirements into section 92a suggests that Congress recognized that national banks were not subject to state approval or licensing, because otherwise states simply could impose their own capital, securities deposit, bond, oath, and affidavit requirements on national banks through the state licensing process.

Finally, state laws that would impose regulatory operating requirements (in particular, a requirement to pledge securities[30]) on the Bank conflict with the Bank's federal authority under section 92a and are preempted. Section 92a(f) requires national banks to follow the securities pledging requirement that the state in which the bank is acting in a fiduciary capacity imposes on corporations acting in that capacity. The OCC's regulation[31] implementing this section addresses the application of section 92a(f) in contexts in which a bank acts in a fiduciary capacity in more than one state, and provides that a bank may compute the amount of deposit required for each state on the basis of trust assets that the bank administers primarily from offices located in that state. Both section 92a(f) and its implementing regulation provide only for incorporation of securities pledging requirements of capacity states. In the Bank's proposal, Michigan is its only capacity state. Accordingly, only Michigan's securities pledging requirement is applicable, and other states' laws are preempted to the extent they require the Bank to pledge securities in a manner inconsistent with section 92a(f) and 12 CFR 914(b).[32]

[30] Minn. Stat. §§ 303.25(Subdivision 3) and 48A.03(Subdivision 2)

[31] 12 CFR 9.14(b)

[32] Language in some earlier OCC letters and other material may suggest that national banks are subject to state laws prohibiting nonresident fiduciaries or that all aspects of state law governing state fiduciary institutions apply to national banks. *See, e.g.,* OCC Interpretive Letter No. 525 (August 8, 1990) (state laws); 7 *Fed. Res. Bull.* 816 (1921) (nonresident fiduciaries). In general, we do not believe they were directly addressing the issues discussed in this letter or offering analysis (*e.g.,* the discussions of state law often appear as general background before the letter reaches its particular topic). *See* Letter No. 695 at pages 18-19 nn. 11 and 12. To the extent the previous letters are inconsistent with this letter, they are superseded.

III. Conclusion

In summary, the Bank, which is authorized to exercise fiduciary powers through its offices in Michigan, is authorized under section 92a to market its services as trustee to, and act as trustee for, customers residing in other states. The Bank may also maintain trust representative offices in those other states. State laws that prohibit or restrict the Bank from exercising its federal powers to act as trustee, to solicit trust business, and to maintain trust representative offices, or that require state approval or license to do so, or that impose securities pledging requirements in addition to those imposed by section 92a conflict with federal law and are preempted by section 92a.[33]

Our conclusions are based on the facts and representations made in the materials submitted by the Bank and discussions with representatives of the Bank. Any material change in facts or circumstances could affect the conclusions stated in this letter.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

[33] Our review of the preemption issues involved in the Bank's inquiry is not subject to the notice and comment procedures for preemption determinations involving state laws in the areas of community reinvestment, consumer protection, fair lending, and establishment of intrastate branches. *See* 12 USC 43. First, the state laws involved here are not within the four covered subject areas, and so section 43 does not apply. Second, the preemption issue whether section 92a preempts state laws that prohibit a national bank from acting as trustee was previously addressed in *Burnes National Bank*, *supra*, and *Fidelity National Bank & Trust Company* v. *Enright*, 264 F. 236, 239 (W.D.Mo. 1920). Similarly, the issue of whether a state may require state approval or license or state examination was also previously resolved by the courts. While the prior cases do not deal with fiduciary powers, the licensing and visitorial powers preemption issues are the same. Third, the preemption issues regarding state laws prohibiting the trust activity, prohibiting trust offices, and requiring state licensing are substantially similar to those previously published for comment by the OCC several times, *see, e.g.,* 62 *Fed. Reg.* 19172-73 (1997) (two applications); 61 *Fed. Reg.* 68543, 68545 (1996) (Part 9 rulemaking, final rule); 60 *Fed. Reg.* 66163, 66171 (1995) (Part 9, proposed rule). Moreover, we note that the OTS has interpreted the parallel provision in HOLA as preempting state law in the same way.

867—June 1, 1999

12 USC 24(7)

12 USC 29

Dear [ ]:

This responds to your letter of February 8, 1999 to William P. Reinhardt, requesting our opinion on whether [ ] (" " or "Branch"), a federal branch located in *[City, State]*, may offer Murabaha financing products as part of the business of banking, pursuant to 12 USC 24(Seventh).

[ ] would like to offer these products to meet the special needs of its customers who adhere to the principles of Islam. The religious prescriptions of Islam or other faiths prohibit customers from borrowing money where the lender charges interest and, therefore, effectively prohibit such customers from engaging in loan transactions with the Branch. [ ] proposes an alternative arrangement, known as a Murabaha financing facility, to help Islamic customers engage in real estate financing transactions and commercial inventory and equipment financing transactions with the Branch.

Under the Murabaha financing facility, [ ] will essentially be functioning in a "riskless principal"/quasi-agency capacity, an activity which is not barred by section 29 of the National Bank Act and is permissible under section 24(Seventh). The Branch will acquire the property on behalf of the customer and then resell the property to the customer at a mark-up on an installment basis. The Branch would like to use Murabaha financing facilities for the acquisition of real estate properties, real estate construction transactions, commercial inventory operations and the acquisition of commercial equipment to accommodate Islamic schools, mosques, community centers and businesses that traditionally have not had access to financing arrangements that are consistent with the religious beliefs of the participants in such community entities or the owners of such businesses. [ ] believes that the Murabaha financing transactions are permissible for a national bank and that the economic substance of the Murabaha financing transactions is functionally equivalent to either a real estate mortgage transaction or an inventory or equipment loan agreement.[1]

We agree with [ ]'s conclusion. Based on the facts and representations [ ] presented, the Murabaha financing transactions are permissible for national banks as part of the business of banking under 12 USC 24(Seventh), and the economic substance of the Murabaha financing transactions is functionally equivalent to either a real estate mortgage transaction or an inventory or equipment loan agreement, as further discussed below.

[ ]'s Proposal

Commercial Transactions

In a Murabaha financing transaction, the customer will identify the property, inventory or equipment to be acquired, negotiate the purchase price with the seller, and apply to [ ] for financing. If the review of the proposal satisfies [ ]'s ordinary credit underwriting criteria, [ ] will agree to simultaneously enter into a purchase agreement with the seller and a Murabaha agreement with the customer (the "Murabaha Agreement"). Pursuant to a purchase agreement, the Branch will purchase the property, inventory or equipment from the seller and then, pursuant to the Murabaha Agreement, immediately resell it to the customer at the original purchase price plus [ ]'s cost and a profit amount which is the cost of financing the sale (the "Murabaha profit").[2]

In a Murabaha commercial inventory or equipment financing transaction, the customer and [ ] will enter into a master Murabaha agreement which will permit individual Murabaha transactions to be consummated pursuant to its terms (the "Master Murabaha Agreement").[3] The aggregate total of individual transactions will not exceed the dollar limit

[1] The OCC previously approved a net lease arrangement for [ ]'s real estate transactions that was consistent with the religious prescriptions of Islam or other faiths. *See* OCC Interpretive Letter No. 806, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,253 (October 17, 1997). Under this net lease arrangement, [ ] acquired the property on behalf of the customer and leased the property back to the customer under a financing agreement over a period of time. Unfortunately, the net lease proved unworkable for certain not-for-profit customers of the Branch because the underlying real estate was subjected to various forms of taxation since it was held in the Branch's name and leased back to the not-for-profit organization. As a result, the Branch believes that a real estate Murabaha financing transaction would effectively eliminate this tax problem and allow the Branch to effectively serve its not-for-profit customer base.

[2] [ ] will add its margin to its costs of funds to calculate the Murabaha profit (the mark-up on the sale). In most cases, LIBOR will be used to determine [ ]'s cost of funds. In all cases, the amount of the Murabaha profit will be calculated to comply with applicable usury laws.

[3] The net lease structure previously discussed and approved by the OCC in Interpretive Letter No. 806, *supra*, does not work efficiently to finance inventory since the customer is constantly selling the property being financed and replacing it with new property. The lease structure has the significant disadvantage of involving [ ] in the sale of goods by the customer to a third-party customer, therefore, potentially exposing [ ] to potential liability to the third-party customer. Although this risk can be minimized through appropriate documentation, the Murabaha structure eliminates this risk completely.

specified in the Master Murabaha Agreement. Once a Master Murabaha Agreement for inventory financing is executed, the customer files with the Branch a purchase order with a promise to purchase requesting that [ ] buy specified goods from a seller. These goods might be raw materials, commodities or finished goods, or commercial equipment. This purchase order constitutes a firm commitment that the customer will purchase the goods from [ ]. The resale price to the customer will include the cost of the goods, any shipping, handling, insurance or other costs with respect to the transporting of the goods, and the Murabaha profit which is typically based on a recognized index such as the London Interbank Offered Rate ("LIBOR"). [ ] will not enter into any sales agreement without having the firm commitment of the customer to purchase the goods from [ ].

Under the terms of the Master Murabaha Agreement, the customer will also execute an agency agreement in which the customer will act as agent for the Branch. The customer will select and inspect the goods to be purchased by the Branch, and under this agreement [ ] will have no liability to the customer for any failure on the part of the seller to either deliver the goods at the time specified in the sales contract or in conformity with the specifications of the sales contract. The customer also agrees to: (i) insure the goods or equipment and the Bank will be an insured party to the extent of its security interest, and (ii) to indemnify the Branch against all actions, claims, and costs relating to the purchase of the equipment or goods by the Branch. Pursuant to an offer to purchase the goods, the customer will then certify that the goods or equipment conform to the qualitative and quantitative requirements of the sales contract. [ ] will not make any payment for the goods until the customer makes this certification. Pursuant to a notice of acceptance, [ ] will disclaim any warranties to the customer concerning the goods[4] and [ ]'s security interest in the goods or equipment will be set out in the Master Murabaha Agreement.[5]

The Branch will also require the customer to pay a down payment of not less than 25 percent of the purchase price (excluding the Murabaha profit) to be paid by the customer for the goods before the Branch will agree to purchase the goods. The amount of the deposit will be determined in accordance with the Branch's customary policies concerning the amount of down payments that are required for inventory financing transactions. In making its determination, the Branch will consider the creditworthiness of the customer and the nature of the goods being purchased.

[ ] represents that the underwriting standards used to evaluate Murabaha financing transactions will be identical to its current underwriting standards for conventional and net lease financings. [ ] also represents that the risks to the Branch in a Murabaha financing transaction are identical to the risks in a conventional mortgage or loan transaction. [ ] will not purchase the equipment or goods for its own portfolio, will not maintain an inventory of goods or equipment for sale to customers, and will not hold itself out as a broker or agent.

[ ] will not operate the equipment, pay taxes, insurance or other charges on the goods or equipment, provide for upkeep or make repairs to the equipment when necessary, assume liability for injuries or accidents in the use of the equipment, or otherwise exercise dominion or control over the goods or equipment. If a commercial customer fails to purchase the goods or equipment under the Master Murabaha Agreement after the goods are purchased by [ ], the Branch will sell them for as much as it can obtain. [ ] will then seek to recover the difference between the amount realized on the sale of the equipment or goods and the amount the customer agreed to pay under a breach of contract action in the appropriate forum. The risk to [ ] is that the customer will have insufficient resources to meet its obligations. This is the same risk that [ ] would have under a conventional inventory or equipment financing had [ ] been forced to foreclose on the goods or equipment.

[ ] also represents that the Murabaha products will be financing products and they will be considered loans for both tax and accounting purposes.

Real Estate Transactions

In the case of a Murabaha real estate financing transaction, the customer will identify the real property, negotiate the purchase price with the seller, and apply to [ ] for financing. If the review of the proposal satisfies [ ]'s ordinary credit underwriting criteria, [ ] will agree to simultaneously enter into a purchase agreement with the seller and a Murabaha Agreement with the customer. Pursuant

[4] The Murabaha transactions ordinarily will not be done on an "open account" basis. Any proceeds from the sale of inventory will be used to pay the amount due for such inventory. Any new purchases of inventory will be subject to a separate Murabaha transaction. However, the Branch has represented that there may be occasions where, based upon the strong credit of the customer, [ ] would enter into an "open account" Murabaha financing. Any decisions concerning "open account" Murabaha financing would be based upon the same criteria that [ ] would use on conventional financings.

[5] In most cases when the goods or equipment are sold to the customer by the Branch, the customer's obligation to pay the purchase price will be secured by a security interest in the goods of the amount owed. The Branch will apply its customer underwriting standards in determining whether to provide financing on a secured or unsecured basis.

to a purchase agreement, the Branch will purchase the real property from the seller and then, pursuant to the Murabaha Agreement, immediately resell it to the customer at the original purchase price plus the Murabaha profit. In all cases, the customer will pay not less than a 25 percent down payment of the purchase price (excluding the Murabaha profit) immediately and the balance over time. [ ] will not close on the purchase of the real estate unless the customer has deposited the down payment amount with [ ] or its designee. Pursuant to a deferred sales contract, the customer will confirm that the Branch makes no warranties or representations to the customer and both parties agree that no other warranties are available. The balance due under the Murabaha Agreement will be secured by a first mortgage (or deed of trust) in favor of [ ]. This mortgage also will require that the property be fully insured jointly in the name of the Branch and the borrower until all sums due under the Murabaha contract are repaid in full.

If the transaction involves construction, either new construction, expansion or renovation, then the customer will enter into a Master Murabaha Agreement in which the aggregate total of individual Murabaha transactions will not exceed the dollar limit specified. Each payment for building materials will be done pursuant to the Master Murabaha Agreement with the Branch purchasing the materials on behalf of the customer and immediately reselling them at the original price plus costs and the Murabaha profit. The deferred purchase price will be secured by a first mortgage (or deed of trust) on the property that will require insurance coverage as well. The aggregate amount that will advance in connection with any such project will be consistent with [ ]'s normal underwriting criteria and will not exceed the amount that [ ] would advance in a conventional construction financing.[6]

[ ] represents that the underwriting standards used to evaluate Murabaha financing transactions will be identical to its current underwriting standards for conventional and net lease financings. [ ] also represents that the risks to the Branch in a Murabaha financing transaction are identical to the risks in a conventional mortgage or loan transaction. [ ] will not purchase real estate for its own portfolio, will not maintain an inventory of real estate or goods for sale to customers, and will not hold itself out as a real estate broker or agent. Moreover, [ ] will not operate the property, pay taxes, insurance, or other charges, maintain upkeep of the premises, make repairs when necessary, assume liability for injuries or other accidents on the property, or otherwise exercise dominion or control over the property.

The purchase of the real estate by [ ] and the Murabaha financing transaction with the customer will occur simultaneously at a specified closing location where the required documentation will be finalized and signed. Before proceeding with the closing transactions, [ ] will first obtain the down payment amount from the customer. At the closing transaction, title to the property will immediately pass from [ ] to the customer, the customer will agree to make payments to the Branch over a specified time period, and [ ] will obtain a security interest (mortgage) for the balance due under the Murabaha Agreement. [ ] will never take possession of the real estate being purchased and there will be no additional or unusual risks assumed by [ ] from holding the real estate for this brief period of time. If the customer ultimately defaults on the payment schedule in the Murabaha Agreement, [ ] would have the right to foreclose on the real estate under its mortgage as it would under any other conventional real estate transaction. The Branch would be able to sell the real estate for as much as it could obtain and then seek to recover the difference between the amount of the down payment plus the amount realized on the sale of the real estate and the amount the customer agreed to pay under a breach of contract action in the appropriate forum. The Bank also has the option of holding the real property as OREO in accordance with 12 CFR Part 34. Thus, the risk to [ ] is that the customer will have insufficient resources to meet its obligations under the Murabaha financing transaction. This is the same risk that [ ] would have under a conventional real estate financing had [ ] been forced to foreclose on the property.

Legal Discussion

The Activities are Permissible for a National Bank

A national bank may engage in activities that are part of, or incidental to, the business of banking under 12 USC 24(Seventh) (a national bank may carry on the business of banking ". . . by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits . . . [and] by loaning money on personal security. . . "). Moreover, national banks have the express authority under section 24(Seventh) to make loans and underwrite mortgages under 12 USC 371. A loan or extension of credit is defined as a "bank's direct or indirect advance of funds to or on behalf of a borrower based on

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[6] [ ] will protect itself from performance risk in exactly the same manner as financial institutions do in conventional construction financing. For example, prior to each disbursement of funds, [ ] will require a contractor's report as to construction progress, an architect's certification as to the accuracy of the contractor's report and lien waivers from subcontractors. The transaction will also be structured so that a portion of the amount [ ] will be providing to the builder will be retained until construction is substantially complete. All of these protections are standard in construction lending.

an obligation of the borrower to repay the funds or repayable from a specific property pledged by or on behalf of the borrower." 12 CFR 32.2(j)(1998). The Murabaha financing transactions proposed by the Branch fit this definition and are therefore permissible banking activities.

In the current financial marketplace lending takes many forms. [ ]'s Murabaha financing proposals are functionally equivalent to or a logical outgrowth of secured real estate lending and inventory and equipment financing, activities that are part of the business of banking. The economic substance of the transaction, rather than its form, guides our analysis of whether national banks can engage in a particular activity. The OCC has followed this line of analysis in many other precedents. *See* OCC Interpretive Letter No. 806, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,253 (October 17, 1997) ([ ]'s net lease transactions functionally equivalent to conventional mortgage financings); OCC Interpretive Letter No. 717, *reprinted in*, [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,032 (March 22, 1996) (national bank's purchase of tax certificates deemed to be authorized under 12 USC 371 because functionally equivalent to the making or purchasing of real estate-secured extensions of credit); OCC Interpretive Letter No. 687, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,002 (August 5, 1995) (using transparency analysis to conclude that national bank may participate in a limited partnership which invests in a pool of bank eligible securities). The courts have regularly supported the OCC's position. *See American Ins. Ass'n* v. *Clarke*, 656 F.Supp. 404 (D.D.C. 1987), *aff'd*, 865 F.2d 278 (D.C. Cir. 1988) (bank powers analysis should focus on the substance of the transaction); *Securities Indus. Ass'n* v. *Clarke*, 885 F.2d 1034 (2d Cir. 1989), *cert. denied*, 110 S.Ct. 1113 (1990) (the sale of pass-through certificates is, in substance, the use of a new mechanism to perform the "old job of selling bank assets").

Here, it is apparent that [ ]'s Murabaha financing proposals are functionally equivalent to conventional financing transactions. [ ] will advance the money to purchase the property or inventory under an obligation from the customer to repay the amount advanced plus the Murabaha profit on an amortized basis upon resale of the property by the Branch to the customer. The obligations will be secured by a mortgage (or security interest) on the facility, equipment or goods, and the amount due will be repaid to the Branch on an amortized basis. [ ]'s ownership of the real estate or equipment/inventory will be for a moment in time, and it will not purchase or maintain an inventory of properties or goods/equipment to sell to customers. Also, from an accounting and a tax perspective, the Murabaha financing transactions will be considered loans on [ ]'s books and they will be treated exactly the same as conventional real estate or inventory/equipment financings. The Branch will not be exposed to greater risks than it would face in a conventional real estate or commercial financing transaction. Thus, the Murabaha transactions are functionally equivalent to conventional real estate or inventory financings where the purchasers would borrow money from the bank to acquire the facility, equipment or goods, secure the loan with a mortgage (or security interest), and repay the loan on an amortized basis to the bank.[7]

The Real Estate Murabaha Financing Transaction is not Contrary to the Restrictions on Bank Ownership of Real Property

Section 29 of the National Bank Act provides that a national bank may purchase, hold, and convey real estate for the following purposes, and for no others:

> First. Such as shall be necessary for its accommodation in the transaction of its business.
>
> Second. Such as shall be mortgaged to it in good faith by way of debts previously contracted.
>
> Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.
>
> Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages ... or shall purchase to secure debts due to it.

[7] As mentioned, [ ]'s Murabaha financing transactions are also similar to "riskless principal" securities transactions in which a broker executes a purchase (or sale) only if it can conduct an offsetting sale (or purchase). It is established OCC precedent that a national bank may engage in riskless principal transactions because they are functionally equivalent to securities brokerage and the bank assumes the responsibilities and obligations ordinarily assumed by a securities broker. *See* OCC Interpretive Letter No. 371, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,541 (June 13, 1986) (bank's subsidiary may act as broker of securities of foreign issuers where customer's order to purchase a security is offset by an order to sell the same security); *see also* OCC Interpretive Letter No. 626 *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 49,101 (July 7, 1993) (bank permitted to act as broker for the sale of preferred equity and investment grade-rated debt securities on behalf of institutional investors in secondary market transactions). Here, [ ] will function like a "riskless principal" because it will not purchase the real estate, equipment or goods until the customer requests that it do so, and the customer agrees to immediately purchase the property from the Branch at the original purchase price plus [ ]'s cost and Murabaha profit. [ ] will assume no greater risks than it already assumes in a conventional mortgage or loan transaction.

The restrictions of section 29 are intended to: (1) keep the capital of banks flowing into the daily channels of commerce; (2) deter banks from embarking on hazardous real estate speculations; and (3) prevent banks from accumulating and holding large masses of real estate in perpetuity. *See, e.g., Union Nat. Bank* v. *Matthews*, 98 U.S. 621 (1878); Interpretive Letter No. 806, *supra*, p.15.

With regard to the real estate Murabaha financing and the restrictions on bank ownership of real property set out in 12 USC 29, it is established OCC precedent that a national bank may hold legal title to property, as a technical matter, when doing so is an integral part of a secured financing arrangement with its customer. *See* Application by National Bank of Commerce, Memphis, Tennessee, OCC Corporate Decision dated March 26, 1999 (unpublished) (a national bank, as part of a financing transaction, may acquire temporarily an interest in real estate); OCC Interpretive Letter No. 806, *supra*; No-Objection Letter No. 86-2 (February 25, 1986), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. ¶ 84,008 (permitting national bank to hold legal title to real property incidental to making a loan); Letter from Robert J. Herrmann, Deputy Comptroller (October 4, 1994) (unpublished) (trust's purchase of the production payments was permissible under section 29 as a preliminary step to further a secured financing transaction).

Each of these letters confirms that the key element in the 12 USC 29 determination is that the property interest is being acquired in furtherance of a permissible banking activity. The Murabaha constitutes a bank's "indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds or repayable from a specific property pledged by or on behalf of the borrower." 12 CFR 32.2(j)(1998). The substance of the transaction remains that the Branch is providing financing to a customer for the acquisition of real property. Thus, the property interest is being acquired in furtherance of a permissible banking activity and it is proper to treat the transaction as an extension of credit that is permissible for a national bank.

Furthermore, the Murabaha financing transaction does not conflict with any of the purposes underlying the restrictions of section 29, *Union Nat. Bank*, *supra*; Interpretive Letter No. 806, *supra*. The Branch will not actually hold real estate. It will not operate the property, pay taxes, insurance, or other charges, maintain upkeep of the premises, make repairs when necessary, assume liability for injuries or other accidents on the property, or otherwise exercise dominion or control over the property. Although the Branch will have legal title[8] for a moment in time, it will not take actual possession of the property at any point during the term of the financing. And similar to a conventional mortgage, if the customer defaults on the Murabaha financing, [ ] will consider the property to be OREO and dispose of it in accordance with 12 CFR Part 34. Despite the appearance of the Branch briefly holding real estate, the substance of the transaction shows that the Branch and the customer will have an arms-length, mortgagor––mortgagee relationship. Thus, the real estate Murabaha financing transaction is not contrary to the restrictions on bank ownership of real property.

Conclusion

Based upon the foregoing discussion, and the commitments and representations made by [ ], we conclude that [ ]'s Murabaha financing products are permissible. If you have further questions concerning the foregoing, or need any additional information, please feel free to contact Senior Attorney James Vivenzio or me at (212) 790-4010.

Jonathan H. Rushdoony
District Counsel
Northeastern District

[8] Legal title refers to "one which is complete and perfect so far as regards the apparent right of ownership and possession, but which carries no beneficial interest in the property, another person being equitably entitled thereto." *Black's Law Dictionary* 897 (6th ed. 1990)

868—August 16, 1999

12 USC 24(7)

Re: *[Bank]*

Dear [ ]:

This is in response to your letter of January 22, 1999, as supplemented by your letter of July 26, 1999, requesting that OCC opine that *[Bank , City, State]*, ("Bank"), may receive, retain and—at some future date—exercise warrants to acquire stock in *[Co., City , State]* ("Company"). The Company provides services and technology to facilitate payments over the Internet. As part of an overall enterprise with the Bank, the Company has issued warrants to the Bank to purchase shares of the Company's common stock. For the reasons set out below, we believe that the Bank may receive, retain, and exercise warrants to acquire stock in the Company.[1]

I. Background

A. The Company

The Company is a provider of services and technology enabling secure electronic payments over the Internet. The Company offers electronic analogues of cash, credit and debit cards, and checks to enable businesses and financial institutions to accept payments over the Internet. For example, the Company's card services enable Internet-based merchants to accept credit or debit card transactions from consumers and to transmit those transactions to the merchant's bank or credit card processor for processing in a secure manner. Similarly, the Company's electronic cash services enable Internet merchants to accept cash-like payments from consumers in a convenient, cost-effective manner.[2]

B. Joint Enterprise

In October 1998, the Bank and the Company entered into an operating agreement ("Operating Agreement") pursuant to which the Bank agreed to license the Company's software that facilitates payment of Internet-based purchases of goods and services. The software, entitled [ ] ("Software"), makes on-line shopping easier for consumers by providing one-click shopping at the Website of any Internet merchant ("Merchant") that uses the Software. The Software requires a consumer to input pertinent billing and shipping information, including a credit card number, at the time of an initial on-line purchase with a participating Merchant. When that shopper makes a later purchase from any Merchant who uses the Software, the information about the consumer is automatically provided and the consumer may complete the transaction simply by entering a password.

Under the Operating Agreement, the Bank is both providing the Company with a license to use the Bank's trademarks in the Software and marketing the Software to merchants. The Company is providing the Bank a license to use the Software and provides all technical and operating support to the Bank by customizing, installing, operating, and maintaining the Software.[3] In exchange for the Company's services and license, the Bank paid or is paying customization, licensing, and operations fees.[4] The Bank also provides the Company with a royalty on all purchases made over the Internet using the Software and a Bank-issued credit card.

The Bank and the Company also entered into a separate warrant agreement ("Warrant Agreement") in November 1998. As further consideration for the Bank's entry into the Operating Agreement, the Bank received warrants entitling the Bank to purchase shares of the Company's common

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[1] While the Bank is acquiring warrants, rather than stock in the Company, the Bank has asked that this letter treat the warrants as if they were fully exercised so that there is no need to seek further approval if and when the warrants are exercised.

[2] In connection with the services it provides, the Company may have access to personal customer information. The Company has adopted a statement of policy ("Privacy Policy") concerning the treatment of this information in the conduct of its business that recognizes the customer's expectations for privacy and provides standards for the use of the customer's financial information. Under the Privacy Policy, the Company represents that it will not share individually identifiable information about consumers with third parties except under limited circumstances. This includes where the customer specifically consents, where it is necessary to process transactions and provide services, and where ordered by a duly empowered governmental authority. When the Company makes its technology or services available to business partners, the Company will not share with them any more consumer information than is necessary. The Company will also make every reasonable effort to assure, by contract or otherwise, that its business partners use its technology and services in a manner that is consistent with the Privacy Policy. The Company further represents in its Privacy Policy that it trains all of its employees about the importance of privacy, and gives access to information about consumers only to those employees who require it to perform their job. Access to privacy-sensitive information is further subject to rigorous procedural and technological controls, designed to preclude unauthorized access to or disclosure of customer information.

[3] The OCC has examination and regulation authority over the Company for services performed by contract or otherwise for the Bank or any national bank pursuant to 12 USC 1867(c).

[4] Under the Agreement, the combined total of these fees is capped at $3,000,000.

stock. The warrants became exercisable in full or in part commencing on January 1, 1999, and terminate on September 30, 2003.[5]

II. Analysis

Your letter raises the issue of the authority of a national bank to make a non-controlling, minority investment in an enterprise. In a variety of circumstances the OCC has permitted national banks to own a non-controlling interest in an enterprise.[6] The OCC has concluded that national banks are legally permitted to make a minority investment in a company provided four criteria or standards are met.[7] These standards, which have been distilled from our previous decisions in the area of permissible minority investments for national banks are:

(1) The activities of the enterprise in which the investment is made must be limited to activities that are part of or incidental to the business of banking.

(2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standards, or be able to withdraw its investment.

(3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.

(4) The investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

Based upon the facts presented, the Bank's proposal satisfies these four standards.

1. The activities of the enterprise in which the investment is made must be limited to activities that are part of or incidental to the business of banking.

The Company is currently engaged in activities that are permissible under 12 USC 24(Seventh) as part of, or incidental to, the business of banking. The Company provides software and support services for cash-equivalent transactions, electronic checking services, and secure credit and debit card payment mechanisms. All of the Company's current activities facilitate the electronic transfer of funds from consumers to businesses and financial institutions. These activities relate to various aspects of the payments system that are central to banking.[8]

Moreover, the software programs that the Company provides are permissible to the extent they perform activities commonly undertaken by banks directly for themselves, other financial institutions,[9] or as part of servicing customers,[10] or constitute the underlying software allowing the banks and their customers to perform these financially related services.[11] It is well established that a national bank may use electronic means to perform services expressly or incidentally authorized to national banks.[12] In fact, the OCC Interpretive Ruling setting forth this authority was recently revised to authorize a national bank to "perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is authorized to perform, provide, or deliver." 61 *Fed. Reg.* 4849 (1996), codified at 12 CFR 7.1019.

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[5] Were it to exercise all of the warrants, the Bank would own approximately 12 percent of the Company's outstanding common stock.

[6] *See, e.g.*, OCC Conditional Approval Letter No. 219 (July 15, 1996).

[7] *See* OCC Interpretive Letter No. 694, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (December 13, 1995); OCC Interpretive Letter No. 692, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (November 1, 1995)

[8] *E.g.,* OCC Conditional Approval Letter No. 289 (October 2, 1998) ("Integrion/CheckFree Letter") (allowing an indirect investment in a company engaged in electronic bill payments, home banking, and other financial activities); OCC Interpretive Letter No. 732, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-049 (May 10, 1996) (permitting an investment in a company engaged in electronic funds transfer and electronic data interchange).

[9] National banks can sell software to other banks as a form of correspondent service if the software performs bank-related data processing functions. *See* OCC Interpretive Letter No. 449, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,673 (Aug. 29, 1983).

[10] This would include software with banking, tax estimation, financial planning, and investment analysis components, and ancillary services related thereto. *See, e.g.,* OCC Interpretive Letter No. 677, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (Jun. 28, 1995) (national bank can engage in joint venture to develop and distribute home banking and financial management software and data processing services to be distributed both through the bank and retail outlets). The software consisted essentially of home banking, tax estimation, financial planning, and investment analysis components, and ancillary services related thereto including the furnishing of checks and other financial forms for the use of customers. The OCC found that all of these types of activities or services had been approved for national banks and their subsidiaries and concluded that banks can provide those services to customers whether or not data processing equipment and programs are utilized. *See* also OCC Interpretive Letter No. 756, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-120 (Nov. 5, 1996) (cash management software).

[11] *See, e.g.,* OCC Conditional Approval No. 221 (Dec. 4, 1996) (national bank can sell software where software will enable bank customer to receive or utilize other services of the bank).

[12] *See, e.g.,* OCC Interpretive Letter No. 677, *supra;* OCC Interpretive Letter No. 449, *supra;* OCC Interpretive Letter No. 284, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,448 (Mar. 26 1984).

2. The Bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw from its investment.

This is an obvious corollary to the first standard. It is not sufficient that the entity's activities are permissible at the time a bank initially acquires its interest; they must also remain permissible for as long as the bank retains an ownership interest.

Minority shareholders in a corporation do not possess a veto power over corporate activities as a matter of corporate law. Accordingly, the Bank lacks the ability to restrict the activities of the Company to only bank permissible activities. It has (or will have upon exercise of the warrants) a minority ownership interest and lacks representation on the board of directors. However, the Bank can divest its shares of the Company's stock subject to applicable securities laws. The Bank has represented that it will divest its interest in the Company should the Company engage in any activities that are not permitted for national banks or entities in which national banks may invest. This divestiture option is adequate to meet the second element.[13]

Furthermore, because the basis of the Bank's authority to acquire and hold the warrants is the authority to own the underlying stock, it follows that the Bank must dispose of the warrants in situations which would require it to dispose of the stock.[14] Therefore, the Bank must also dispose of any warrants it is holding if the Company engages in any activities that are not permitted for national banks or entities in which national banks may invest. The Warrant Agreement allows the Bank to transfer the warrants, and the Bank represents that it will do so if the Company engages in impermissible activities.

Therefore, the second standard is satisfied.

3. The Bank's loss exposure must be limited, as a legal and accounting matter, and the Bank must not have open-ended liability for the obligations of the enterprise.

a. Loss exposure from a legal standpoint

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that a bank's investment not expose it to unlimited liability. Typically, this is not a concern when a national bank invests in corporations, for shareholders are not liable for the debts of the corporation, provided proper corporate separateness is maintained.[15] This is the case here.

b. Loss exposure from an accounting standpoint

In assessing a bank's loss exposure as an accounting measure, the OCC has previously noted that the appropriate accounting treatment for a bank's less than 20 percent ownership share or investment in a corporate entity is to report it as an unconsolidated entity under the equity or cost method of accounting. Under the equity method of accounting, unless the investor has extended a loan to the entity, guaranteed any of its liabilities, or has other financial obligations, the investor's losses are generally limited to the amount of the investment shown on the investor's books. *See generally* Accounting Principles Board, Op. 18 § 19 (1971) (equity method of accounting for investments in common stock).

The Bank has (or will have upon exercise of the warrants) no greater than a 12 percent ownership interest in the Company. The Bank believes, and its accountants have advised, that the appropriate accounting treatment for the Bank's investment is the equity method.[16] Thus the Bank's loss from an accounting perspective would be limited to the amount invested in the Company, and the Bank will not have any open-ended liability for the obligations of the Company.

The Bank's loss exposure is limited, as a legal and accounting matter. Therefore, the third standard is satisfied.

4. The investment must be convenient or useful to the Bank in carrying out its business and not a mere passive investment unrelated to that Bank's banking business.

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[13] OCC Interpretive Letter No. 852, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-309 (Dec. 11, 1998).

[14] *Cf. Integrion/CheckFree* Letter, *supra.*

[15] *Cheatle* v. *Rudd's Swimming Pool Supply Co.,* 234 Va. 207, 212, 360 S.E.2d 828, 831 (1987) ("The proposition is elementary that a corporation is a legal entity entirely separate and distinct from the shareholders or members who compose it."); 1 W. Fletcher, *Cyclopedia of the Law of Private Corporations,* § 25 (rev. perm. ed. 1990).

[16] OCC's Chief Accountant has concluded that the Bank's investment should be recorded as "Investments in unconsolidated subsidiaries and associated companies" on the Bank's Consolidated Reports of Condition and Income ("Call Reports"). Such classification is consistent with the Call Report Instructions. *See* Instructions to Schedule RC-M, item 8.b.

A national bank's investment in an enterprise or entity that is not an operating subsidiary of the bank must also satisfy the requirement that the investment have a beneficial connection to that bank's business, *i.e.*, it must be convenient or useful to the investing bank's business activities and not constitute a mere passive investment unrelated to the bank's banking business. Twelve USC 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful." *See Arnold Tours, Inc.* v. *Camp*, 472 F.2d 427, 432 (1st Cir. 1972). Therefore, the investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.[17]

This requirement is met in this case. The Bank's current enterprise with and investment in the Company are the result of a strategic business relationship between the Bank and the Company. The investment will be consistent with the Bank's campaign to provide secure and reliable credit card payment services over the Internet. The Bank's involvement with the Company will foster the Bank's ability to offer customers secured electronic credit card services in a manner consistent with, and supportive of, the Bank's banking activities.

III. Conclusion

Based upon the information and representations you have provided, and for the reasons discussed above, we conclude that the Bank may make a non-controlling, minority investment in the Company, subject to the following conditions:

1. The Company may engage only in activities that are part of, or incidental to, the business of banking;
2. In the event that the Company engages in an activity that is inconsistent with condition number one, the Bank will divest its interest—whether common stock or warrants—in the Company;
3. The Bank will account for its investment in the Company under the equity method of accounting; and,
4. The Company will be subject to OCC supervision, regulation, and examination.[18]

[17] *See, e.g.,* OCC Interpretive Letter No. 697 (November 15, 1995), *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-012; OCC Interpretive Letter No. 543 (February 13, 1991), *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255; OCC Interpretive Letter No. 427 (May 9, 1988), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651.

[18] This examination authority will be in addition to the authority over the Company vested in the OCC by the Bank Service Company Act. 12 USC 1867(c).

Please be advised that all conditions of this approval are "conditions imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818.

If you have any questions, please contact Steven Key, Attorney, Bank Activities and Structure, at (202) 874-5300.

Julie L. Williams
Chief Counsel

869—October 12, 1999

12 USC 214

Re: [ ] ("Bank") Share Exchanges Pursuant to Alabama State Corporate Law

Dear [ ]:

This is in response to your request for confirmation that the Bank may elect the corporate governance provisions of Alabama law and complete a share exchange in accordance with those provisions. Based on the representations that you have made, we conclude that the Bank may effect a proposed share exchange by following the provisions of Alabama law.

Background

The Bank proposes to elect the corporate governance provisions of Alabama law through amendment to its articles of association and bylaws, and engage in a share exchange as provided by Alabama law. The Bank wishes to form a parent holding company and proposes the share exchange to ensure that the holding company will own 100 percent of the shares of the Bank.

The Bank would use several steps to accomplish the share exchange. The Bank would form a company to act as the holding company of the Bank.[1] The shareholders of the Bank would vote on the plan of share exchange. If the holders of two-thirds of the shares of the Bank approve the share exchange, the holding company would then exchange its shares for shares of the Bank using the procedures described in

[1] The Bank would file an application with the Federal Reserve Bank of Atlanta to form the holding company.

Alabama law.[2] As a result, each shareholder of the Bank would own shares of the holding company, and the holding company would own 100 percent of the shares of the Bank. Each shareholder of the Bank would have the opportunity to own the same number and percentage of shares in the holding company as that shareholder previously held in the Bank. In the alternative, shareholders could exercise dissenters' rights and receive cash for their shares.[3]

Applicable Law

National banks may adopt corporate governance procedures that comply with applicable federal banking law and safe and sound banking practices. An OCC regulation provides that:

> To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the Delaware General Corporation Law, Del. Code Ann. Tit. 8 (1991, as amended 1994, and as amended thereafter), or the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter). A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.[4]

Alabama statutory law expressly permits corporations to conduct share exchanges.[5] The holders of at least two-thirds of each class of shares entitled to vote must approve the plan of share exchange.[6] The corporation's board of directors also must approve the transaction.[7] After the shareholders approve the share exchange, the acquiring corporation must deliver articles of share exchange to the secretary of state.[8]

Alabama statutory law requires corporations conducting share exchanges to provide dissenters' rights to shareholders.[9] Corporations must include notice of dissenters' rights with the notice for the meeting at which the shareholders will vote on the transaction.[10] Any shareholder who wishes to dissent must give notice to the corporation of intent to dissent and may not vote in favor of the transaction at the shareholders' meeting.[11] If the shareholders approve the transaction, the corporation must send written notice to all dissenters after the meeting concerning the procedure for demanding payment.[12] Dissenting shareholders must then demand payment, and the corporation must make payment to the shareholders.[13] Any shareholder who is dissatisfied with the payment offered must provide the corporation with an estimate of fair value.[14] The corporation must then either pay the amount requested by the shareholder, or seek an appraisal from the court.[15] In an appraisal proceeding, the corporation is presumed to pay costs, but the court may assess the costs to the shareholders if the court finds that the shareholders' actions were arbitrary, vexatious, or not in good faith.[16]

Federal banking law does not expressly address the authority of national banks to engage in share exchanges. There are several mechanisms, however, by which a national bank may form a parent holding company and, as a result, own 100 percent of the shares of a bank. For example, a national bank can effect a holding company reorganization by forming a holding company and chartering an interim bank, which is a subsidiary of that company. The existing bank then merges into the interim bank.[17] The

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[2] *See* Ala. Code § 10-2B-11.02 *et seq.*

[3] *See id.* at § 10-2B-13.01 *et seq.*

[4] 12 CFR 7.2000(b).

[5] Ala. Code § 10-2B-11.02(a).

[6] *Id.* at § 10-2B-11.03(e).

[7] *Id.* at § 10-2B-11.02(a).

[8] *Id.* at § 10-2B-11.05.

[9] *Id.* at § 10-2B-13.02(a)(2).

[10] *Id.* at § 10-2B-13.20(a).

[11] *Id.* at § 10-2B-13.21(a).

[12] *Id.* at § 10-2B-13.22(a).

[13] *Id.* at §§ 10-2B-13.23(a) and 10-2B-13.24(a).

[14] *Id.* at § 10-2B-13.28(a).

[15] *Id.* at § 10-2B-13.30(a).

[16] *Id.* at § 10-2B-13.31(a).

[17] *See* 12 USC 215a and 12 CFR 5.33(e)(4). Some circuit courts have permitted interim mergers. *See, e.g., NoDak Bancorporation* v. *Clarke,* 998 F.2d 1416 (8th Cir. 1993) (permitting interim merger of national bank that froze out minority shareholders). The Eleventh Circuit, which includes Alabama, has invalidated a freeze-out interim merger for a national bank, but has not addressed the permissibility of the interim merger device generally. *See Lewis* v. *Clark,* 911 F.2d 1558 (11th Cir. 1990). *Lewis* involved a freeze-out merger with disparate forms of consideration, *i.e.,* some shareholders received cash for their shares, while others received holding company shares. We believe *Lewis* would not prohibit a share exchange because all shareholders who do not dissent from the transaction would receive the same consideration, *i.e.,* holding company shares.

National Bank Act provides protection for shareholders in an interim merger by providing dissenters' rights.[18]

A national bank may become a holding company subsidiary through other methods, *e.g.,* by forming a holding company which then conducts a tender offer for the shares of the bank. Those methods can be time consuming, relatively expensive, and present a risk that the holding company will acquire less than 100 percent of the bank's shares.

Discussion

A national bank may adopt Alabama state corporate governance procedures and conduct a share exchange, to the extent that those procedures are not inconsistent with applicable federal banking statutes and regulations. OCC regulation expressly permits a national bank to elect the corporate governance procedures of the law of the state in which the main office of the bank is located.[19] Because the main office of the Bank is located in Alabama, the Bank may elect Alabama corporate governance procedures.

Alabama state law allowing share exchanges is not inconsistent with applicable federal banking statutes or regulations. The transaction would not directly or indirectly violate federal banking law, which is silent concerning share exchanges. Alabama law permitting share exchanges is consistent with those provisions in federal banking law that permit national banks to accomplish the same result through different steps where the bank provides adequate dissenters' rights as described below. To ensure consistency with federal banking law addressing interim mergers,[20] national banks that effect a share exchange must provide reasonable appraisal rights to those shareholders who choose not to receive shares by dissenting from the transaction. A national bank conducting a share exchange should provide dissenters' rights that are substantially similar, although not necessarily identical to those in section 215a.[21]

Alabama law governing share exchanges provides shareholders with dissenters' rights that are substantially similar to those in section 215a for interim mergers.[22] Both Alabama law and section 215a provide shareholders the right to dissent and receive fair value for the shares. In both cases, if the parties are unable to settle on the fair value of the shares, an independent third party (a state court under Alabama law or the Comptroller under the National Bank Act) ultimately determines the fair value of the shares.[23] Under each system of dissenters' rights, a dissatisfied shareholder may dissent from the transaction and receive the fair value of the shares, as determined by the independent third party.

Alabama law in one respect is not consistent with the dissenters' rights available in federal banking law. Alabama law provides that the corporation must pay the cost of any judicial appraisal, unless the court finds that the dissenting shareholders acted arbitrarily, vexatiously, or not in good faith in demanding payment.[24] Federal banking law, in contrast, requires the resulting bank to pay for any Comptroller appraisal, without exception.[25] Section 7.2000(b) limits the ability of national banks to adopt alternative corporate governance to only those statutes that are not inconsistent with federal banking law so that national bank shareholders will not suffer a disadvantage resulting from the bank's selection of that alternative law. To meet that limitation in section 7.2000(b), a national bank proposing to adopt Alabama law and conduct a share exchange must agree to pay the cost of any judicial appraisal that may result. The Bank must also agree to pay for arbitration of the matter if the appropriate court refuses jurisdiction of an appraisal action.

Conclusion

For the above reasons, and subject to the above conditions, we conclude that the Bank may effect a share exchange pursuant to Alabama law. If you have any questions concerning this letter, please contact Frederick G. Petrick, Jr., Senior Attorney, Securities and Corporate Practices Division, at 202-874-5210.

Julie L. Williams
Chief Counsel

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[18] *See* 12 USC 215a(b)-(d). A dissenting shareholder must either vote against the merger, or give written notice of dissent prior to or at the shareholder meeting at which the shareholders vote on the merger. The value of the dissenting shareholder's shares is determined by an appraisal made by a committee of three persons: one chosen by the dissenting shareholders, one chosen by the directors of the bank (as it exists after the merger), and one chosen by the other two members of the committee. If the committee fails to determine a value of the shares, or a dissenting shareholder is not satisfied with the value determined, the OCC must make an appraisal of the shares. The resulting bank must pay the costs of any appraisal conducted by the OCC.

[19] 12 CFR 7.2000(b).

[20] 12 USC 215a.

[21] *See* Footnote 18, *supra.*

[22] Ala. Code § 10-2B-13.01 *et seq.*

[23] The scheme of dissenters' rights in Alabama law is also substantially similar to that found in Iowa law. *Compare* Ala. Code at § 10-2B-13.01 *et seq. with* Iowa Code § 490.1301, *et seq.* The OCC has found that the dissenters' rights available under Iowa law afford comparable protections to corresponding provisions in the National Bank Act. *See* Interpretive Letter No. 786, *reprinted in* [1997 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 81-213 (June 9, 1997) and Conditional Approval No. 99-10 (Apr. 1, 1999) at 5.

[24] Ala. Code § 10-2B-13.31.

[25] 12 USC 215a(d).

870—October 12, 1999

12 USC 214

Re: Share Exchanges Pursuant to Washington State Corporate Law

Dear [ ]:

This is in response to your request for confirmation that a national bank may elect the corporate governance provisions of Washington law, and complete a share exchange in accordance with those provisions. Based on the representations that you have made, we conclude that a bank may effect a proposed share exchange by following the provisions of Washington law.

Background

A national bank with its main office located in Washington state proposes to elect the corporate governance provisions of Washington law through amendment to its articles of association and bylaws, and engage in a share exchange as provided by Washington law. The bank wishes to form a parent holding company and proposes the share exchange to ensure that the holding company will own 100 percent of the shares of the bank.

The bank would use several steps to accomplish the share exchange. The bank would form a company to act as the holding company of the bank.[1] The shareholders of the bank would vote on the plan of share exchange. If the holders of two-thirds of the shares of the bank approve the share exchange, the holding company would then exchange its shares for shares of the bank using the procedures described in Washington law.[2] As a result, each shareholder of the bank would own shares of the holding company, and the holding company would own 100 percent of the shares of the bank. Each shareholder of the bank would have the opportunity to own the same number and percentage of shares in the holding company as that shareholder previously held in the bank. In the alternative, shareholders could exercise dissenters' rights and receive cash for their shares.[3]

[1] The Bank would file an application with the Federal Reserve Bank of San Francisco to form the holding company.

[2] *See* Wash. Rev. Code §23B.11.020 *et seq.* (1990).

[3] *See id.* at § 23B.13.010 *et seq.*

Applicable Law

National banks may adopt corporate governance procedures that comply with applicable federal banking law and safe and sound banking practices. An OCC regulation provides that:

> To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the Delaware General Corporation Law, Del. Code Ann. Tit. 8 (1991, as amended 1994, and as amended thereafter), or the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter). A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.[4]

Washington statutory law expressly permits corporations to conduct share exchanges.[5] The holders of at least two-thirds of each class of shares entitled to vote must approve the plan of share exchange.[6] The corporation's board of directors also must approve the transaction.[7] After the shareholders approve the share exchange, the acquiring corporation must deliver articles of share exchange to the secretary of state.[8]

Washington statutory law requires corporations conducting share exchanges to provide dissenters' rights to shareholders.[9] Corporations must include notice of dissenters' rights with the notice for the meeting at which the shareholders will vote on the transaction.[10] Any shareholder who wishes to dissent must give notice to the corporation of intent to dissent and may not vote in favor of the transaction at the shareholders' meeting.[11] If the shareholders approve the transaction, the corporation must send written notice to all dissenters after the meeting concerning

[4] 12 CFR 7.2000(b).

[5] Wash. Rev. Code § 23B.11.020(a). State banks in Washington may also form parent holding companies through share exchanges. *Id.* at § 30.04.560.

[6] *Id.* at § 23B.11.030(5) (1990).

[7] *Id.* at § 23B.11.020(1).

[8] *Id.* at § 23B.11.050.

[9] *Id.* at § 23B.13.020(1)(b).

[10] *Id.* at § 23B.13.200(1).

[11] *Id.* at § 23B.13.210(1).

the procedure for demanding payment.[12] Dissenting shareholders must then demand payment, and the corporation must make payment to the shareholders.[13] Any shareholder who is dissatisfied with the payment offered must provide the corporation with an estimate of fair value.[14] The corporation must then either pay the amount requested by the shareholder, or seek an appraisal from the court.[15] In an appraisal proceeding, the corporation is presumed to pay costs, but the court may assess the costs to the shareholders if the court finds that the shareholders' actions were arbitrary, vexatious, or not in good faith.[16]

Federal banking law does not expressly address the authority of national banks to engage in share exchanges. There are several mechanisms, however, by which a national bank may form a parent holding company and, as a result, own 100 percent of the shares of a bank. For example, a national bank can effect a holding company reorganization by forming a holding company and chartering an interim bank, which is a subsidiary of that company. The existing bank then merges into the interim bank.[17] The National Bank Act provides protection for shareholders in an interim merger by providing dissenters' rights.[18]

A national bank may become a holding company subsidiary through other methods, *e.g.,* by forming a holding company which then conducts a tender offer for the shares of the bank. Those methods can be time consuming, relatively expensive, and present a risk that the holding company will acquire less than 100 percent of the bank's shares.

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[12] *Id.* at § 23B.13.220(1).

[13] *Id.* at § 23B.13.230(1).

[14] *Id.* at § 23B.13.280(1).

[15] *Id.* at § 23B.13.300(1).

[16] *Id.* at § 23B.13.310(1).

[17] *See* 12 USC 215a and 12 CFR 5.33(e)(4). Although the holding company reorganization is a common transaction, the Ninth Circuit Court of Appeals, which includes Washington, has not addressed the permissibility of that transaction for national banks. *See Nasser* v. *Federal Home Loan Bank Bd.,* 723 F.2d 1437 (9th Cir. 1984) (challenge to interim merger involving thrifts dismissed on jurisdictional grounds). Some circuit courts have permitted interim mergers. *See, e.g., NoDak Bancorporation* v. *Clarke,* 998 F.2d 1416 (8th Cir. 1993) (permitting interim merger of national bank that froze out minority shareholders). Another circuit has invalidated a freeze-out interim merger for a national bank, but has not addressed the permissibility of the interim merger device generally. *See Lewis* v. *Clark*, 911 F.2d 1558 (11th Cir. 1990).

[18] *See* 12 USC 215a(b)-(d). A dissenting shareholder must either vote against the merger, or give written notice of dissent prior to or at the shareholder meeting at which the shareholders vote on the merger. The value of the dissenting shareholder's shares is determined by an appraisal made by a committee of three persons: one chosen by the dissenting shareholders, one chosen by the directors of the bank (as it exists after the merger), and one chosen by the other two members of the committee. If the committee fails to determine a value of the shares, or a dissenting shareholder is not satisfied with the value determined, the OCC must make an appraisal of the shares. The resulting bank must pay the costs of any appraisal conducted by the OCC.

Discussion

A national bank may adopt Washington state corporate governance procedures and conduct a share exchange, to the extent that those procedures are not inconsistent with applicable federal banking statutes and regulations. OCC regulation expressly permits a national bank to elect the corporate governance procedures of the law of the state in which the main office of the bank is located.[19] Because the main office of the bank is located in Washington state, the bank may elect Washington corporate governance procedures.

Washington state law allowing share exchanges is not inconsistent with applicable federal banking statutes or regulations. The transaction would not directly or indirectly violate federal banking law, which is silent concerning share exchanges. Washington law permitting share exchanges is consistent with those provisions in federal banking law that permit national banks to accomplish the same result through different steps where the bank provides adequate dissenters' rights as described below. To ensure consistency with federal banking law addressing interim mergers,[20] national banks that effect a share exchange must provide reasonable appraisal rights to those shareholders who choose not to receive shares by dissenting from the transaction. A national bank conducting a share exchange should provide dissenters' rights that are substantially similar, although not necessarily identical to those in section 215a.[21]

Washington law governing share exchanges provides shareholders with dissenters' rights that are substantially similar to those in section 215a for interim mergers.[22] Both Washington state law and section 215a provide shareholders the right to dissent and receive fair value for the shares. In both cases, if the parties are unable to settle on the fair value of the shares, an independent third party (a state court under Washington law or the Comptroller under the National Bank Act) ultimately determines the fair value of the shares.[23] Under each system of dissenters' rights, a

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[19] 12 CFR 7.2000(b).

[20] 12 USC 215a.

[21] See Footnote 18, *supra.*

[22] Wash. Rev. Code § 23B.13.010 *et seq.*

[23] The scheme of dissenters' rights in Washington law is also substantially similar to that found in Iowa law. *Compare* Wash. Rev. Code at § 23B.13.010 *et seq. with* Iowa Code § 490.1301, *et seq.* The OCC has found that the dissenters' rights available under Iowa law afford comparable protections to corresponding provisions in the National Bank Act. *See* Interpretive Letter No. 786, *reprinted in* [1997 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 81-213 (June 9, 1997) and Conditional Approval No. 99-10 (Apr. 1, 1999) at 5.

dissatisfied shareholder may dissent from the transaction and receive the fair value of the shares, as determined by the independent third party.

Washington state law in one respect is not consistent with the dissenters' rights available in federal banking law. Washington law provides that the corporation must pay the cost of any judicial appraisal, unless the court finds that the dissenting shareholders acted arbitrarily, vexatiously, or not in good faith in demanding payment.[24] Federal banking law, in contrast, requires the resulting bank to pay for any Comptroller appraisal, without exception.[25] Section 7.2000(b) limits the ability of national banks to adopt alternative corporate governance to only those statutes that are not inconsistent with federal banking law so that national bank shareholders will not suffer a disadvantage resulting from the bank's selection of that alternative law. To meet that limitation in section 7.2000(b), a national bank proposing to adopt Washington state law and conduct a share exchange must agree to pay the cost of any judicial appraisal that may result. The bank must also agree to pay for arbitration of the matter if the appropriate court refuses jurisdiction of an appraisal action.

Conclusion

For the above reasons, and subject to the above conditions, we conclude that the bank may effect a share exchange pursuant to Washington law. If you have any questions concerning this letter, please contact Frederick G. Petrick, Jr., Senior Attorney, Securities and Corporate Practices Division, at 202-874-5210.

Julie L. Williams
Chief Counsel

[24] Wash. Rev. Code § 23B.13.310.

[25] 12 USC 215a(d).

871—October 14, 1999

12 USC 24(7)

Re: [ ], LLC

Dear [ ]:

This is in response to your letter seeking confirmation that it would be lawful for [ ] ("Bank") to acquire a direct noncontrolling investment in [ ] ("LLC"), a *[State]* limited liability company. Based on the information and representations provided and for the reasons set forth below, I conclude that the proposed investment is legally permissible.

Proposal

The LLC is a commercial finance company engaged in the business of making secured and unsecured loans to owners, operators and third-party landlords of franchised, licensed or branded retail businesses. The LLC is not currently engaged, but intends to engage either directly or indirectly through one or more subsidiaries (not yet established), in the activities of (a) advising its customers regarding acquisitions and dispositions of businesses, (b) assisting customers in private placements of debt and equity, and (c) acting as an investment advisor to private investment funds. (These funds would be closely held and none would be investment companies as defined in the Investment Company Act of 1940, 15 USC 80a-1 *et seq.*)

The Bank proposes to make its investment in the LLC in four stages, as follows:

1. The Bank has an existing credit facility to the LLC. If and when the OCC confirms the permissibility of the Bank's investments in the LLC as described in your letter, the LLC will issue to the Bank, without additional consideration, membership interests in the LLC ("Interests") equal to 20 percent of the total outstanding Interests, whereupon the Bank will have the right to designate three members of the LLC's seven-member Board of Managers. If the OCC does not confirm the permissibility of the Bank's investment in the LLC, the latter will be obligated to prepay the credit facility.
2. If the OCC confirms the permissibility of the Bank's investment in the LLC, the Bank will decide on or before March 31, 2000, whether to increase the amount of its credit facility to the LLC. If the Bank decides to do so, the LLC will issue to the Bank, again without additional consideration, an additional 10 percent of

the total outstanding Interests. If the Bank decides not to do so, the LLC will have the right to prepay the credit facility and repurchase the Interests previously issued to the Bank.

3. The Bank will have the option, exercisable in 2001, to purchase from the LLC an additional 20.1 percent of the total outstanding Interests ("Option"). If the Bank exercises the Option, it will then own 50.1 percent of the total outstanding Interests and will have the right to designate four members of the LLC's Board of Managers, which will then be increased to eight members.

4. The Bank's exercise of the Option will also obligate it to purchase from the other members of the LLC all of the remaining outstanding Interests, in two stages:

   a. A further 29.9 percent of the total outstanding Interests in 2005, at which time the Bank will have the right to designate six members of the LLC's eight-member Board of Managers; and

   b. The final 20 percent of the total outstanding Interests in 2008, at which time the Bank will designate all eight members of the Board of Managers.

Under the facts as described, the Bank will not have a controlling interest in the LLC unless and until it exercises the Option in stage 3. At the two earlier stages, the Bank will have only a minority interest. In your letter, you request only the OCC's concurrence that the acquisitions of non-controlling minority membership Interests in the LLC described in stages 1 and 2 above are legally permissible. If in the future the Bank decides that it wishes to exercise the Option to acquire a majority of the Interests in the LLC in stage 3, it will be obligated to submit an application to the OCC and obtain prior approval for such exercise under our operating subsidiary regulation at 12 CFR Part 5.

Analysis

In a variety of circumstances, the OCC has permitted national banks to own, either directly, or indirectly through an operating subsidiary, a non-controlling interest in an enterprise. The enterprise might be a limited partnership, a corporation, or a limited liability company.[1] In several interpretive letters, the OCC has concluded that national banks are legally permitted to make a non-controlling investment in a limited liability company provided that four criteria are met.[2] These standards, which have been distilled from our previous decisions in the area of permissible non-controlling investments for national banks and their subsidiaries, are:

(1) The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking;

(2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard or be able to withdraw its investment;

(3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise; and

(4) The investment must be convenient or useful to the bank in carrying out its business and not merely a passive investment unrelated to that bank's banking business.

Based upon the facts presented, the Bank's proposal to make the minority investments described in stages 1 and 2 above satisfies these four standards.

1. The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking.

Our precedents on non-controlling ownership have recognized that the enterprise in which the bank holds an interest

[1] *See* also 12 CFR 5.36(b). National banks are permitted to make various types of equity investments pursuant to 12 USC 24(Seventh) and other statutes.

[2] *See, e.g.,* Interpretive Letter No. 842, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-297 (September 28, 1998); Interpretive Letter No. 737, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-101 (August 19, 1996); Interpretive Letter No. 694, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (December 13, 1995); Interpretive Letter No. 692, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (November 1, 1995). In other recent letters, the OCC has permitted national banks to make a non-controlling investment in an enterprise other than a limited liability company, provided the investment satisfies these four standards. *See, e.g.,* Interpretive Letter No. 705, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,020 (October 25, 1995); Interpretive Letter No. 697, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,012) (November 15, 1995).

must confine its activities to those that are part of, or incidental to, the conduct of the business of banking.[3]

As described above and in your letter, the LLC's existing and proposed activities consist of (a) making loans, (b) providing financial advice to business customers regarding acquisitions or dispositions of businesses, (c) assisting customers in private placements of debt and equity, and (d) acting as an investment adviser to private investment funds. Certain of these activities may require the LLC (or its subsidiary, if one or more should subsequently be established) to register as a broker-dealer and/or investment advisor.

The LLC's existing and proposed activities are permissible ones for national banks.

(a) Lending

Lending is clearly an authorized activity under 12 USC 24(Seventh).

(b) Financial advice to businesses

It is well established that national banks have the power to provide financial advice and counseling to their customers as part of or incidental to the business of banking pursuant to 12 USC 24(Seventh). *See, e.g.,* Interpretive Letter No. 137, *reprinted in* [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,218 (December 27, 1979); Letter from Judy Walter, Senior Deputy Comptroller for National Operations (July 17, 1986) (unpublished). Such advice may include "consulting services in connection with merger and acquisition transactions." Letter from J. Michael Shepherd, Senior Deputy Comptroller for Corporate and Economic Programs (March 9, 1988) (unpublished).[4]

(c) Private placement of debt and equity

The OCC has confirmed in a number of letters that national banks are authorized to arrange private placements of debt and equity securities for their customers on an agency basis and that this activity does not constitute securities dealing or underwriting in violation of the Glass-Steagall Act, 12 USC 24(Seventh), 377, 78 and 378. *See, e.g.,* Interpretive Letter No. 463, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,687 (December 27, 1988); Interpretive Letter No. 212, *reprinted in* [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,293 (July 2, 1981); Interpretive Letter No. 32, *reprinted in* [1978-1979 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,107 (December 9, 1977).

Further, to the extent that the activities of the LLC or any subsequently established subsidiary may involve securities brokerage services, the authority of national banks to perform such services for their customers has been confirmed both by the OCC and the federal courts. *See, e.g.,* Interpretive Letter No. 403, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,627 (December 9, 1987); Interpretive Letter No. 380, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 (December 29, 1986); *Securities Industry Association* v. *Comptroller of the Currency,* 577 F. Supp. 252 (D.D.C.. 1983), *aff'd.,* 758 F. 2d 739 (D.C. Cir. 1985), *cert. denied,* 474 U.S. 1054 (1986) (brokerage issue); *Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 468 U.S. 207 (1984). Moreover, the combination of investment advisory and discount brokerage services in the same national bank subsidiary has also been approved. *See, e.g.,* Interpretive Letter No. 403, *supra.*

(d) Investment advice

It is well established that national banks and their subsidiaries are authorized to provide investment advice as part of or incidental to the business of banking. *See, e.g.,* Interpretive Letter No. 622, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,504 (April 9, 1993); Interpretive Letter No. 367, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,537 (August 19, 1986).

Accordingly, the first standard is met.

2. The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard or be able to withdraw its investment.

Subject to the OCC's authorization of the Bank's investment in the LLC, the latter's operating agreement will be

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[3] *See, e.g.,* Interpretive Letter No. 380, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 n.8 (December 29, 1986) (since a national bank can provide options clearing services to customers, it can purchase stock in a corporation providing options clearing services); Letter from Robert B. Serino, Deputy Chief Counsel (November 9, 1992) (since the operation of an ATM network is "a fundamental part of the basic business of banking," an equity investment in a corporation operating such a network is permissible).

[4] While not discussed in your letter, it is noted that to the extent that the proposed counseling services involve bringing together potential buyers and sellers of businesses, they would also be permissible activities under Interpretive Ruling 7.1002, 12 CFR 7.1002, which allows a national bank to act as a finder. The permissibility of a national bank acting as a finder to bring together buyers and sellers of various types of products and services has been confirmed in several interpretive letters. *See, e.g.,* Interpretive Letter No. 653, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (December 22, 1994); Walter Letter, *supra;* Shepherd Letter, *supra.*

amended to add the Bank as a member of the LLC and to limit the LLC's activities to those that are part of, or incidental to, the business of banking and that are permissible activities for a national bank. In addition, the operating agreement and any other relevant documentation governing the LLC's operations will provide that the LLC will not engage in any new business activity disapproved by the managers designated by the Bank. Therefore, the Bank, while holding only a non-controlling interest in the LLC, will be able to prevent the latter from engaging in any activity that is not permissible for a national bank.

Accordingly, the second standard is satisfied.

3. The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.

a. Loss exposure from a legal standpoint

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the bank's investment not expose it to unlimited liability.

As a legal matter, investors in a Delaware limited liability company will not incur liability with respect to the liabilities or obligations of the limited liability company solely by reason of being a member or manager of the company.[5] Moreover, the LLC's operating agreement will not contain any clauses making the Bank liable for any obligations of the LLC.[6] The Bank's loss exposure for the liabilities of the LLC will be limited to the amount of its investment, which will be minimal in stages 1 and 2, and the existing credit facility.

b. Loss exposure from an accounting standpoint

In assessing a bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's 20-50 percent ownership share of investment in a limited liability company is to report it on an unconsolidated basis. Under the equity method of accounting, unless the bank has extended a loan to the entity, guaranteed any of its liabilities or has other financial obligations to the entity, losses are generally limited to the amount of the investment shown on the investor's books.[7] In this instance, as described above, the Bank has extended a credit facility to the LLC as part of its normal banking business.

During the period in which the Bank owns only a non-controlling interest in the LLC, *i.e.,* during stages 1 and 2 as described above, the Bank will account for its investment in the LLC under the equity method of accounting. The Bank's loss exposure from an accounting perspective will be limited to the amount of its investment and the credit facility. The Bank will not have any open-ended exposure to the liabilities of the LLC.

Therefore, for both legal and accounting purposes, the Bank's potential loss exposure relative to the LLC should be limited to the total amount of its investment (expected to be minimal in stages 1 and 2) and the credit facility, which of course is subject to the regular legal lending limits of 12 USC 84. Because the Bank will not have open-ended liability for the liabilities of the LLC and its potential exposure is quantifiable and controllable, the third standard is satisfied.

4. The investment must be convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's banking business.

A national bank's investment in an enterprise or entity that is not an operating subsidiary of the bank must also satisfy the requirement that the investment have a beneficial connection to the bank's business, *i.e.,* be convenient or useful to the investing bank's business activities, and not constitute a mere passive investment unrelated to that bank's banking business. Twelve USC 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful."[8] Our precedents on bank non-controlling investments have indicated that the investment must be convenient or useful to the bank in conducting that bank's business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.[9]

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[5] *See* Del. Code Ann. Title 6, Section 18-303 (West 1996).

[6] Telephone conversation with Mr. Robert F. Darling, Vice President and Senior Counsel, Wells Fargo Law Department (September 23, at 2:00 p.m.)

[7] *See generally,* Accounting Principles Board, Op. 18 § 19 (1971) (equity method of accounting for investments in common stock). Interpretive Letter No. 692, *supra.*

[8] *See Arnold Tours, Inc.* v. *Camp,* 472 F.2d 427, 432 (1st Cir. 1972).

[9] *See, e.g.,* Interpretive Letter No. 697, *supra*; Interpretive Letter No. 543, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (February 13, 1991); Interpretive Letter No. 427, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988); Interpretive Letter No. 421, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,645 (March 14, 1988); Interpretive Letter No. 380, *supra.*

As noted above, the Bank views its investment in the LLC as a means of entering the franchise finance and related businesses conducted by the LLC. Moreover, as part of the transaction, the LLC will agree to use the Bank's services for all of its banking needs (subject to applicable law). In addition, the LLC will give the Bank a right of first refusal to provide financing to the LLC to enable the LLC to fund loans to the latter's customers. As a result, the Bank expects to generate substantial new lending opportunities.

For these reasons, the investment is convenient and useful to the Bank in carrying out its business and is not a mere passive investment.

Accordingly, the fourth standard is satisfied.

Conclusion

Based upon the information and representations you have provided, and for the reasons discussed in this letter, I conclude that the Bank's acquisition of non-controlling minority membership Interests in the LLC as described in stages 1 and 2 above is legally permissible, subject to the following conditions:

(1) The LLC will engage only in activities that are part of, or incidental to, the business of banking;

(2) The Bank will have veto power over any activities and major decisions of the LLC that are inconsistent with condition (1) above, or will withdraw from the LLC in the event it engages in an activity that is inconsistent with condition (1);

(3) The Bank will account for its investment in the LLC under the equity method of accounting; and

(4) The LLC will be subject to OCC supervision, regulation, and examination.

This letter applies only to the Bank's acquisition of non-controlling minority Interests in the LLC as described in stages 1 and 2. If in the future the Bank decides that it wishes to exercise the Option to acquire a majority of the Interests in the LLC in stage 3, it will be obligated to submit an application to the OCC and obtain prior approval for such exercise under our operating subsidiary regulation at 12 CFR Part 5.

Please be advised that the conditions of this approval are deemed to be "conditions imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818, and, as such, may be enforced in proceedings under applicable law.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

872—October 28, 1999

12 USC 92A

Bruce Rigelman, Esq.
Counsel
Bank One
100 East Broad Street, 18th Floor
Columbus, OH 43215

Re: Authority of Bank One to Engage in Fiduciary Activities in California

Dear Mr. Rigelman:

This replies to your letter of August 25, 1999, in which you request, on behalf of Bank One Trust Company, NA (the "Bank"), confirmation from this office that (a) the Bank may solicit and conduct trust business and operate non-branch trust offices in California and (b) state laws that prohibit the Bank from engaging in these activities are preempted by federal law. As discussed more fully below, the Bank initially intends to have an office in California whose activities would be limited to marketing the Bank's trust services. The Bank anticipates, however, that it eventually will expand the operations of that office, and perhaps open additional offices in California, to provide a full range of trust services to customers located in California and elsewhere. You state in your letter that various California laws, as construed by the Acting Commissioner of the Department of Financial Institutions for the State of California, prohibit or restrict the Bank from engaging in these activities, and you have concluded, accordingly, that federal law preempts these state laws. For the reasons expressed herein, we concur.

I. Background

The Bank, which has its main office in Columbus, Ohio, has opened an office in California that currently is engaged solely in marketing the Bank's trust services, providing liaison with

people who open fiduciary accounts with the Bank, and providing similar incidental services. In this phase of the office's operations (referred to as Phase 1 in your letter), the office will act as a trust representative office.[1] The core functions that are essential to the creation and administration of the fiduciary relationship—which include accepting a fiduciary appointment, executing the documents that create the fiduciary relationship, and making decisions regarding the investment or distribution of fiduciary assets—will be performed by Bank personnel in other states during Phase 1. However, as the Bank's base of customers in and around California grows, the Bank may decide, in Phase 2 of its operations in California, to open additional trust representative offices in California or open full-service trust offices in California that offer a full range of trust services. You state that none of the trust offices or trust representative offices contemplated will receive deposits, pay checks, or make loans.

The Bank has requested the OCC's views on whether state laws that would impair or impede the Bank's ability to establish trust offices and trust representative offices and engage in the activities described above are preempted by federal law. In responding to this request, we review in section II.A of this letter the standards that govern the preemption of state laws with respect to national banks. We then discuss in sections II.B and II.C the scope of national bank powers under section 92a and the authority under section 92a for the Bank's proposed activities. In section II.D, we apply the preemption standards to the laws addressed in your letter and conclude that they are preempted.

II. Analysis

A. National banks are federal instrumentalities. State laws that frustrate the purposes for which these federal instrumentalities were created are preempted.

National banks are brought into existence under federal legislation, and are federal instrumentalities subject to the paramount authority of the United States.[2] Thus, it is well established that any state law limiting the operation of national banks is preempted by federal law and invalid under the Supremacy Clause of the United States Constitution (U.S. Const. art. VI, cl. 2 (the Supremacy Clause)) if the state law "expressly conflicts with the laws of the United States, and either frustrates the purpose of national legislation or impairs the efficiency of [national banks] to discharge the duties for the performance of which they were created."[3]

Congress may confer power on the states to regulate national banks or may retain that power.[4] The question is whether Congress, in enacting the federal law, intended to exercise its constitutionally delegated authority to set aside the laws of the state.[5] Absent explicit preemption language, courts must consider whether the federal statute's "structure and purpose" reveal a clear preemptive intent.[6]

Federal law may preempt state law where it is in "irreconcilable conflict" with state law.[7] This may occur where compliance with both statutes is an impossibility.[8] Preemption is also appropriate where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[9]

When state and federal laws are inconsistent, the state law is preempted regardless of the motive or subject of the state law. As the Supreme Court noted in *Gade* v. *National Solid Wastes Management Ass'n,* 505 U.S. 88, 103 (1992) in holding that a state law designed to promote worker safety was preempted:

> In determining whether state law "stands as an obstacle" to the full implementation of a federal law, *Hine* v. *Davidowitz,* 312 U.S., at 67, "it is not enough to say that the ultimate goal of both federal and state law" is the same, *International Paper Co.* v. *Ouellette,* 479 U.S. 481, 494 (1987). "A state law also is pre-empted if it interferes with the methods by which the federal statute was designed to reach th[at] goal." *Ibid.;* see also *Michigan Canners & Freezers Assn., Inc.* v. *Agricultural Marketing and Bargaining Bd.,* 467 U.S. 461, 477 (1984).

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[1] A "trust representative office" is an office of a national bank, other than a main office, a branch, or a trust office, at which the bank performs activities related to its fiduciary business, but does not act in a fiduciary capacity. This term is used to contrast the limited activities of a trust representative office from those of a trust office, at which a bank may act in a fiduciary capacity.

[2] *Davis* v. *Elmira Sav. Bank,* 161 U.S. 275 (1896); *M. Nahas Co., Inc.* v. *First National Bank of Hot Springs,* 930 F.2d 608, 610 (8th Cir. 1991).

[3] *Cohen* v. *Virginia,* 19 U.S. (6 Wheat.) 264, 414 (1821) (Marshall, C.J.); *Davis,* 161 U.S. at 283.

[4] *Independent Comm. Bankers Ass'n of South Dakota, Inc.* v. *Board of Governors of the Federal Reserve System*, 820 F.2d 428, 436 (D.C.Cir. 1987).

[5] *California Fed. Sav. & Loan Ass'n* v. *Guerra,* 479 U.S. 272, 280-281 (1987).

[6] *Jones* v. *Rath Packing Co.,* 430 U.S. 519, 525 (1977).

[7] *Rice* v. *Norman Williams Co.,* 458 U.S. 654, 659 (1982).

[8] *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142-143 (1963).

[9] *Barnett Bank of Marion County* v. *Nelson,* 517 U.S. 25, 31 (1996) (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)).

See also Morales v. *Trans World Airlines, Inc.,* 504 U.S. 374 (1992) (holding that a state statute allegedly designed to prevent market distortion caused by false advertising of airfares was precluded by federal law preempting state regulation of the rates, routes, or services of air carriers).

In the context of preemption of state laws affecting national banks, the Supreme Court's analysis is informed by the unique purposes for which the national banking system was created. Through the national charter, Congress has established a banking system intended to be both nationwide in scope and uniform in character. As stated by the Supreme Court in *Easton* v. *Iowa*, 188 U.S. 220, 229 (1903), federal legislation affecting national banks "has in view the erection of a system extending throughout the country, and independent, so far as the powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states." *See also Davis, supra,* at 283 ("This freedom from State control over a national bank's powers protects national banks from conflicting local laws unrelated to the purpose of providing the uniform, nationwide banking system that Congress intended."); *Farmers' & Merchants National Bank* v. *Dearing,* 91 U.S. 29, 33 (1875) ("National banks organized under [the National Bank A]ct are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end.").

The Supreme Court has consistently relied on the special federal purpose of national banks as an important reason for concluding that national bank powers normally are not limited by state law. In *First National Bank of San Jose* v. *California*, 262 U.S. 366 (1923) ("*FNB San Jose*"), for instance, the Supreme Court stated "[A]ny attempt by a state to define [national banks'] duties or control the conduct of their affairs is void, whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation, or impairs the efficiency of the bank to discharge the duties for which it was created." *Id.* at 369. Applying this principle to the authority of national banks to accept deposits, the Court in *FNB San Jose* observed that "Plainly, no state may prohibit national banks from accepting deposits, or directly impair their efficiency in that regard." *See also Marquette National Bank* v. *First of Omaha Corp.,* 423 U.S. 299, 307 (1978) (finding that a national bank is an instrumentality of the federal government, created for a public purpose, and as such necessarily is subject to the paramount authority of the United States).

Preemption of state laws affecting national banks may occur—notwithstanding that compliance with both state and federal laws is possible—if the state laws "infringe the national banking laws or impose an undue burden on the performance of the banks' functions."[10] Preemption may arise notwithstanding the absence of directly conflicting duties imposed by federal and state laws. In *Barnett, supra*, the Supreme Court found that federal law preempts state law when the federal law merely authorizes national banks to engage in activities that a state law expressly forbids.[11]

B. Under 12 USC 92a, the Bank is authorized to market its trust services to, solicit trust business from, and act as trustee for customers in all states.

Pursuant to section 92a, a national bank may act in certain fiduciary capacities, subject to the law of the state where the bank is located. In the case of the eight types of fiduciary activities specifically enumerated in section 92a(a),[12] in general a national bank may act in those fiduciary activities provided that the law of the state in which the bank is located does not prohibit competitors of national banks from conducting those fiduciary activities. A national bank also may act in any other fiduciary capacity in which national banks' competitors may act under the laws of the state where the national bank is located.

As noted above, section 92a(a) authorizes a national bank to act in fiduciary capacities, with the extent of permissible capacities being determined in part by the laws of the state where the bank is located. When a national bank is acting in a fiduciary capacity in a given state, section 92a also makes laws of that state governing the deposit of securities, execution of bonds, and taking of oaths applicable to the bank.[13] In each of these cases, the references to state laws occur in conjunction with references to, or descriptions of, the national bank's acting in a fiduciary capacity. In light of this context, we conclude that for pur-

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[10] *Anderson National Bank* v. *Luckett,* 321 U.S. 233, 248 (1944).

[11] *Barnett,* 517 U.S. at 31.

[12] Section 92a(a) states:

> The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

[13] *See* 12 USC 92a(f) (securities deposit and bond requirement) and 92a(g) (officers' oath or affidavit requirement). Section 92a(i) also requires a national bank to comply with minimum capital requirements that apply to state institutions.

poses of section 92a, a national bank is "located" in a state where it acts in a fiduciary capacity.[14] Accordingly, in order to determine where a national bank is located under section 92a (and thereby know which state's laws apply), one must determine where the bank is acting in a fiduciary capacity.

Section 92a does not explicitly address what level of contact is necessary for the bank to be deemed to be acting in a fiduciary capacity within the meaning of the statute. In our view, the best construction of the statute is to determine that location by looking to the place at which the bank performs core functions of a fiduciary. These core functions include accepting the appointment, executing the documents that create the fiduciary relationship, and making decisions regarding the investment or distribution of fiduciary assets.

Conversely, the determination of where the bank acts in a fiduciary capacity should *not* look to every location where customers reside or where trust assets are located, or be based on places at which the bank engages in other non-fiduciary activities primarily for the purpose of establishing or maintaining customer relationships. Thus, core fiduciary functions do not include advertising, marketing, or soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer (*e.g.,* forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); or simply inspecting or maintaining custody of fiduciary assets.

The conclusion that "acting in a fiduciary capacity" includes only a central range of activities is consistent with analysis employed by the courts and the OCC in other situations where a federal law borrows from, or refers to, state law. For example, in the context of identifying the state in which a national bank is located for purposes of determining the allowable interest rate it may charge on loans under 12 USC 85, the Supreme Court rejected the view that various business contacts that were part of the lending relationship were sufficient to make the bank "located" in a state for purposes of section 85, because the rejected approach would make the meaning of term "located" too uncertain.[15] Similarly, under the well-established treatment of lending for branching purposes, where a national bank "makes a loan" for purposes of 12 USC 36 depends on certain key bank activities, not on the many types of customer contacts that may occur in the loan transaction. Finally, a national bank's authority to sell insurance pursuant to 12 USC 92 is statutorily tied to its location in a "place of 5,000," although the bank may market to customers residing elsewhere.[16]

Importantly, our approach does not mean that national banks may engage in fiduciary activities free from state-imposed restrictions. Rather, this approach simply identifies *which* state's laws will apply. Absent this certainty, national banks would be unable to know whether their contacts with a state were sufficient to alter the outcome of which state's law applied. This would impose an enormous burden on the ability of national banks to exercise fiduciary powers, contrary to the purposes for which the national banking system was created and in the absence of any indication in section 92a that such a result is intended.

Once a national bank is authorized under section 92a to act in a fiduciary capacity, section 92a imposes no limitations on where the bank may market its services or where the bank's fiduciary customers may be located. There is no evidence of a congressional intent to limit a national bank's exercise of fiduciary powers only to customers based in states in which the bank is exercising its fiduciary capacities, nor is it reasonable to infer such a limitation. Moreover, a grant of fiduciary powers to a national bank necessarily includes the power to advertise

[14] A fundamental principle of statutory construction is that the meaning of a word is informed by its context. Sutherland Stat. Const. § 46.05 (5th ed. 1992). As the Supreme Court has often explained, "We consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme. The meaning of statutory language, plain or not, depends on context." *Bailey* v. *U.S.*, 516 U.S. 137, 145 (1995). Thus, in interpreting the language of a statute, courts do not look at one provision in isolation, but rather look to the entire statutory scheme for clarification and contextual reference. *U.S.* v. *McLemore*, 28 F.3d 1160, 1162 (11th Cir. 1994).

[15] *See Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp.*, 439 U.S. 299, 311-13 (1978). *See also* OCC Letter No. 822; 12 CFR 7.1003, 7.1004, and 7.1005.

[16] *See* OCC Interpretive Letter No. 753 (Nov. 4, 1996), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107. This is consistent with the analysis suggested by the Conference of State Bank Supervisors for identifying the state in which an entity is acting in a fiduciary capacity. See Conference of State Bank Supervisors (CSBS), *Statutory Options for Multistate Trust Activities* (March 1997) at third page of unpaginated Introduction and §§ 1.002(a)(28) and (37), 1.102(m), 2.101-2.106 and 2.201-2.202 of the model Multistate Trust Institutions Act (distinguishing three different tiers for an out-of-state bank's fiduciary activities in a host state—(1) marketing and soliciting without an office in the state, (2) a trust representative office, and (3) a full service trust office—of which only the full service trust office "acts in a fiduciary capacity" in the host state). Several states have adopted similar provisions. *See, e.g.,* 6 Okla. Stat. §§ 1701 *et. seq.* (1998) (legislation based on CSBS Model); Wis. Stat. Ann. § 223.12(3) (authorizing out-of-state banks to have trust representative offices that "do not act in a fiduciary capacity"); Minn. Stat. §§ 48.475 and 48.476 (authorizing trust service offices and representative trust offices for state trust institutions; a representative trust office engages in a trust business other than specified activities that are "acting as a fiduciary").

its fiduciary services to customers.[17] This incidental power extends to all customers, regardless of their location.

To infer a geographic limit on where a national bank may market a service it is authorized to perform, or on where customers of a particular bank product or service may live or work, would be fundamentally inconsistent with how national banks are permitted to exercise other authorized powers. For example, national banks are authorized to make loans and receive deposits only at "branches." While establishment of a branch in a particular location requires OCC approval, once established, the branch may make loans to,[18] or accept deposits from, customers anywhere, including customers who live or work in states other than where the branch is located. Similarly, a national bank is authorized to sell insurance under 12 USC 92 if it is located in a place with a population of less than 5,000, but the bank's insurance agency based in such a place may sell insurance to customers in other places, including other states.[19]

A national bank also may use a trust office or trust representative office (*i.e.,* an office that does not act in a fiduciary capacity) to facilitate its marketing efforts. Assuming that a trust office or trust representative office does not receive deposits, pay checks, or lend money, it will not be considered a "branch" as that term is defined in 12 USC 36(j),[20] and, therefore, will not be subject to the requirements and limitations imposed by section 36 or to the state laws referenced in section 36.[21]

In summary, the fiduciary capacities in which a national bank may act, and certain other provisions in section 92a governing its operations, are determined by reference to the law of the state in which the bank acts in a fiduciary capacity, but the bank may advertise and solicit customers for its fiduciary business from other states. The bank also may operate trust offices and trust representative offices nationwide to facilitate performance of its fiduciary business.

C. Section 92a permits the Bank both to solicit trust business and to act in a fiduciary capacity in California. The Bank may do so through one or more offices in California.

As proposed, the Bank intends only to solicit trust business and engage in related customer liaison and incidental services in Phase 1 of its trust operations in California. The Bank's core fiduciary functions will be performed during Phase 1 at offices located outside of California. The Bank anticipates expanding its operations in California during Phase 2 to include performing the core fiduciary functions. Applying the section 92a statutory framework to the Bank's proposal, the Bank may solicit trust business in California in Phase 1, notwithstanding that the Bank's main office is in Ohio and that the core fiduciary functions for California trust customers are performed outside of California. This is consistent with the conclusions stated above that the authority to offer a service necessarily includes the power to advertise that service and that nothing in section 92a limits where a national bank may advertise its trust services.

The Bank's contemplated activities in Phase 2 also are permissible under federal law. During this phase, the Bank will be engaging in the core fiduciary functions in Califor-

[17] It is well established that a national bank's power to engage in an authorized activity includes the power to advertise its services. *See, e.g., Franklin National Bank of Franklin Square* v. *New York,* 347 U.S. 373 (1954); *Bank One, Utah, N.A.* v. *Guttau,* No. 98-3166 (8th Cir. September 2, 1999). OCC Conditional Approval No. 221 (December 4, 1996); OCC Interpretive Letter No. 494 (December 20, 1989) (national bank incidental powers).

[18] *See, e.g., Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp.,* 439 U.S. 299 (1978) (national bank from one state lending to customers in another state may charge federally authorized interest rate without regard to law of customers' state); *Bank of America National Trust & Savings Ass'n* v. *Lima,* 103 F. Supp. 916, 917-18 (out-of-state national bank's ability to lend in a state does not depend on state's permission; state cannot require national banks to register as foreign corporations); *Indiana National Bank* v. *Roberts,* 326 So.2d 802, 803 (Miss. 1976) (same, citing other cases).

[19] *See Independent Insurance Agents of America, Inc.* v. *Ludwig,* 997 F.2d 958 (D.C. Cir. 1993), *aff'g* 736 F. Supp. 1162 (D.D.C. 1990), *on remand on other grounds from* 508 U.S. 439 (1993). *See also NBD Bank, N.A.* v. *Bennett,* 67 F.3d 629 (7th Cir. 1995); *Shawmut Bank Connecticut* v. *Googins,* 965 F. Supp. 304 (D. Conn. 1997).

[20] *See, e.g., Clarke* v. *Securities Industry Association,* 479 U.S. 388, 392 n.2 (1987); *Cades* v. *H & R Block, Inc.,* 43 F.3d 869, 874 (4th Cir. 1994), *cert. denied,* 515 U.S. 1103 (1995); *Dep't of Banking & Consumer Finance of Missouri* v. *Clarke,* 809 F.2d 266, 270 (5th Cir.), *cert. denied,* 483 U.S. 1010 (1987).

[21] *See* Interpretive Letter No. 695, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-010 (December 8, 1995) (IL 695), at 4, in which the OCC concluded that a national bank office that provided only fiduciary services would not be subject to the McFadden Act (12 USC 36). The reasoning of, and conclusions reached in, IL 695 are incorporated herein by reference. *See also Bank One, Utah* v. *Guttau*, No. 98-3166, slip. op. at 7, 9 (8th Cir. September 2, 1999) (stating, after finding that automated teller machines (ATMs) are excluded from the definition of "branch" in section 36(j), "By excluding ATMs from the definition of 'branch,' Congress ... signaled its intention to foreclose the states from imposing location and approval restrictions on a national bank's ATMs. * * * Congress has made clear in the [National Bank Act] its intent that ATMs are not to be subject to state regulation....").

nia.[22] Therefore, the Bank will be authorized to engage in the fiduciary capacities listed in section 92a(a) to the extent that these capacities are not in contravention of California law. The Bank also may act in any other fiduciary capacity in which state banks, trust companies, or other corporations that compete with national banks are permitted to act under California laws.[23]

The Bank may engage in both the Phase 1 and Phase 2 activities either through the office that has been established or through any additional office, whether opened in California or elsewhere. Assuming that these offices will not receive deposits, pay checks, or lend money, they will not be considered "branches" for purposes of section 36(j), and thus are not subject to the provisions of state law made applicable to national bank branches pursuant to section 36.[24]

D. The state laws described by the Bank are preempted to the extent that they conflict with the Bank's authorization to exercise fiduciary powers granted pursuant to section 92a.

You have asked whether federal law preempts California laws that, as interpreted by the Acting Commissioner of the California Department of Financial Institutions (the "Acting Commissioner") in a letter to you dated February 10, 1999 (the "February 10 letter"), effectively prohibit the Bank from engaging in the fiduciary activities described here.[25] The Acting Commissioner's interpretations of the laws in question, which appear at Cal. Fin. Code §§ 1500, 1502, 1503, and 3824, may be summarized as follows:

Section 1500: No corporation (which includes national banks) may engage in trust business unless, *inter alia,* it has received a certificate of authority to engage in trust business from the Commissioner;[26]

Section 1502: National banks may conduct trust business in California, but only if the bank maintains its main office or a branch office in California, is authorized to transact trust business, and has complied with other requirements set out in Article 3 of Chapter 12 of the California Banking Law. A trust office is not a branch office for purposes of section 1502.

Section 1503: No foreign corporation, other than "a national banking association or a foreign (other state) state bank that is authorized to conduct a trust business" in California, may transact trust business in California. Approval by the OCC for the Bank to conduct trust business in California is not "authorization" for purposes of this statute.

Section 3824: No foreign bank that does not already have a branch office in California may establish a *de novo* branch in California. A trust office *is* a branch for purposes of section 3824.

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[22] It appears from your letter that all of the Bank's core fiduciary functions performed during Phase 2 will be performed at one or more offices located in California. Thus, we need not determine here whether all or only some of them are the key functions in order to determine whether the Bank will be acting in a fiduciary capacity in California.

[23] *See* IL 695.

[24] The OTS has reached the same conclusions under section 5(n) of the Home Owners' Loan Act ("HOLA"), 12 USC 1464(n), which authorizes federal savings associations to engage in fiduciary powers. See, e.g., OTS Chief Counsel Opinion (August 8, 1996), reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) 83-102 ("OTS August 1996 Opinion"); OTS Chief Counsel Opinion No. 94/CC-13 (June 13, 1994), reprinted in [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 82,814 ("OTS June 1994 Opinion"). See also OTS Chief Counsel Opinion (January 4, 1999); OTS Chief Counsel Opinion (July 1, 1998), reprinted in [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) 83-272; OTS Chief Counsel Opinion (June 21, 1996); OTS Chief Counsel Opinion (March 28, 1996), reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) 83-100 ("OTS March 1996 Opinion"). Section 5(n) of HOLA was originally modeled on section 92a, and was intended to give federal savings associations the same fiduciary powers as national banks. See Pub. L. No. 96-221, § 403, 44 Stat. 146, 156; S. Rep. No. 368, 96th Cong., 2d Sess. 12-13, 23 (1980).

[25] The Acting Commissioner also has submitted a letter to the OCC, dated October 4, 1999, noting the continued disagreement of the California Department of Financial Institutions with the views expressed by the OCC in IL 695. In that letter, the OCC stated that section 92a authorizes a national bank that has been granted fiduciary powers to exercise those powers in any state (subject to whatever state law limits are made applicable to national banks by section 92a), including having trust offices in any state. The OCC solicited comments, in conjunction with proposed amendments to the OCC's regulation governing fiduciary activities (12 CFR Part 9), on the legal framework under section 92a for interstate fiduciary powers of national banks as set out in IL 695. *See* 60 FR 66171-72. The Acting Commissioner submitted a comment in response to that solicitation, and refers in the October 4 letter to objections raised in that comment. We have carefully considered all the points made by the California Department of Financial Institutions in reaching the conclusions stated in this letter.

[26] This section also requires a corporation seeking to engage in trust business in California to deposit money or securities with the State Treasurer as a pledge for the faithful performance of court and private trusts in accordance with section 1540 of the California Code. In a letter to Comerica Incorporated dated October 8, 1999, the OCC concluded that federal law preempts pledging requirements as they apply to trust representative offices. However, this issue is mooted in the instant situation by the Bank's voluntarily entering into a Safekeeping Agreement with the California State Treasurer that satisfies the pledging requirement.

Taken together, these provisions, as interpreted by the Acting Commissioner, would prohibit the Bank from exercising its authority under federal law to establish trust offices and trust representative offices in any state once it receives the approval of the OCC to exercise fiduciary powers.

As noted, section 92a does not impose any geographic limit on the places where a national bank may market its fiduciary services, where it may act in a fiduciary capacity, or where the bank's fiduciary customers are located. Nor does section 92a condition the exercise of fiduciary powers on compliance with state laws that purport to impose licensing or operating requirements on national banks. The California laws in question, as interpreted by the Acting Commissioner, conflict with section 92a, both because they effectively prohibit the Bank from engaging in activities permissible under federal law and because they purport to impose licensing requirements on the Bank.

Section 1500, as interpreted by the Acting Commissioner, prohibits a national bank from conducting trust business in California unless it first obtains a certificate of authority to engage in trust business from the Acting Commissioner. Section 1502 creates a limited exception to this prohibition for national banks, but only if they have a "licensed presence" (*i.e.,* their main office or a bank branch) in California. Section 1503 precludes a foreign corporation that is not authorized to conduct a trust business in California from exercising the trust powers enumerated in that section. Finally, section 3824 forbids a national bank that does not have a bank branch in California from operating a non-branch trust office. Because the Bank's only presence in California is the office that engages in marketing the Bank's trust services, and because the Acting Commissioner has concluded that this office is not a "licensed presence" for purposes of section 1502, these laws prohibit the Bank from engaging in the fiduciary activities permitted by federal law. As a result, these state laws are preempted to the extent that they prohibit the Bank from having trust offices or trust representative offices in California.

Even if the Bank were able to satisfy the requirements of sections 1502, 1503, and 3824, the Bank would be required by section 1500 to obtain a certificate of authority from the State of California before establishing a trust office. If a national bank is authorized under federal law to exercise a power, it does not require the additional permission of a state to exercise that power. To conclude otherwise would run counter to the paramount authority of the federal government over national banks,[27] including the OCC's exclusive visitorial power over national banks.[28] This conclusion is supported by the language of section 92a. Paragraph (a) of that section expressly delegates to the OCC the authority to determine whether a national bank may engage in fiduciary activities, while paragraph (i) lists considerations to be used by the OCC in acting on applications for fiduciary powers. The references to state law in section 92a are limited to ensuring that certain restrictions apply to national banks if they apply to other types of entities. These include, for instance, provisions governing the pledge of securities (section 92a(f)) and officials' oaths and affidavits (section 92a(g)). The fact that Congress incorporated state law requirements into section 92a reflects Congress's recognition that national banks were not subject to state approval or licensing.

III. Conclusion

In summary, the Bank, which has received the OCC's approval to exercise fiduciary powers, is authorized under section 92a to market its services as trustee to, and act as trustee for, customers residing in California and other states. The Bank may also maintain trust offices and trust representative offices in California. In our opinion, state laws that prohibit or restrict the Bank from exercising its federal powers to act as trustee, to solicit trust business, and to maintain offices, or that require state approval or license

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[27] *See, e.g. Burnes National Bank* v. *Duncan,* 265 U.S. 17, 24 (1924) (the authority of Congress to grant national banks fiduciary powers in section 92a is independent of the states, "as otherwise the State could make it nugatory"). Courts also have held that routine state registration requirements, such as obtaining a certificate of authority as a foreign corporation, are not applicable to national banks. *See, e.g., Bank of America National Trust & Savings Ass'n* v. *Lima,* 103 F. Supp. 916, 918, 920 (D. Mass. 1952) (in case where out-of-state bank lent to customer in state, state statute requiring foreign corporations to qualify to do business held not applicable to national banks); *Indiana National Bank* v. *Roberts,* 326 So.2d 802, 803 (Miss. 1976) (same); *First National Bank of Tonasket* v. *Slagle,* 5 P.2d 1013, 1914 (Wash. 1931) (same); *State National Bank of Connecticut* v. *Laura,* 256 N.Y.S. 2d 1004, 1006 (Cty. Ct. 1965) (same).

[28] A state requirement that a national bank obtain state approval or license to exercise a power authorized under federal law is an assertion by the state that it has supervisory or regulatory authority over national banks. This is in direct conflict with federal law providing that the OCC has exclusive visitorial powers over national banks except as otherwise provided by federal law. 12 USC 484; 12 CFR 7.4000(b). *See generally Guthrie v. Harkness,* 199 U.S. 148, 159 (1905) (states may not exercise right of visitation over national banks).

to do so, conflict with federal law and are preempted by section 92a.[29]

Our conclusions are based on the facts and representations made in the materials submitted by the Bank and discussions with representatives of the Bank. Any material change in facts or circumstances could affect the conclusions stated in this letter.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

873—December 1, 1999

12 USC 92

Re: Insurance Agency Activities in New York Under 12 USC 92

Dear [ ]:

This is in response to your letter requesting confirmation that Mang-Wilber, LLC (the "Agency"), a jointly-owned insurance agency of Wilber National Bank, Oneonta, New York (the "Bank"), may sell insurance through satellite offices of the Agency in the state of New York, in addition to the Agency's "place of 5,000" location, as permitted under New York law. Based on the facts and representations set forth in your letter and on additional information and representations you have provided, as described herein, we conclude that, under 12 USC 92, the Agency, appropriately located in a "place of 5,000," may solicit and sell insurance in the manner permissible for insurance agencies generally in the state of New York and as authorized by the Agency's state insurance license.

[29] Our review of the preemption issues involved in the Bank's inquiry is not subject to the notice and comment procedures for preemption determinations involving state laws in the areas of community reinvestment, consumer protection, fair lending, and establishment of intrastate branches. *See* 12 USC 43. First, the state laws involved here are not within the four covered subject areas, and so section 43 does not apply. Second, the preemption issue whether section 92a preempts state laws that prohibit a national bank from acting as trustee was previously addressed in *Burnes National Bank*, *supra*, and *Fidelity National Bank & Trust Company* v. *Enright*, 264 F. 236, 239 (W.D.Mo. 1920). Similarly, the issue of whether a state may require state approval or license or state examination was also previously resolved by the courts. While the prior cases do not deal with fiduciary powers, the licensing and visitorial powers preemption issues are the same. Third, the preemption issues regarding state laws prohibiting the trust activity, prohibiting trust offices, and requiring state licensing are substantially similar to those previously published for comment by the OCC several times, *see, e.g.,* 62 *Fed. Reg.* 19172-73 (1997) (two applications); 61 *Fed. Reg.* 68543, 68545 (1996) (Part 9 rulemaking, final rule); 60 *Fed. Reg.* 66163, 66171 (1995) (Part 9, proposed rule). Moreover, we note that the OTS has interpreted the parallel provision in HOLA as preempting state law in the same way.

I. Background

For purposes of this request, the factual situation you describe involves a national bank engaged in the banking business in New York. After submission of the appropriate application to the OCC and insurance agent license application to the New York Insurance Department ("NYID"), and approval thereof, the Bank acquired a 50 percent non-controlling investment in the Agency. The Agency is located in a "place of 5,000 persons or less" in which the Bank is located and doing business. The Bank and the Agency have operated in conformity with the conditions established by the OCC in approving the Bank's non-controlling investment in the Agency, including the condition that the Agency's activities be limited to activities that are part of, or incidental to, the business of banking. The Bank and the Agency also have operated in conformity with the requirements of section 92.

II. Discussion

A. Section 92 Authorizes Insurance Sales Activities for National Banks

Under 12 USC 92, a national bank located and doing business in a place with a population of 5,000 or fewer may act as an agent for state-authorized insurance companies by soliciting and selling insurance, collecting premiums, and receiving commissions and fees for these services from the insurance company.[1] By its terms, section 92 does not require a bank's insurance solicitation and sales activities to occur within the "place of 5000." Specifically, there is no restriction as to either the location of customers or the methodology of sale.

[1] Section 92 states:

> In addition to the powers now vested by law in national banking associations...any such association located and doing business in any place the population of which does not exceed five thousand inhabitants...may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent....

12 USC 92.

Congress explicitly vested the OCC in section 92 with the authority to prescribe rules and regulations concerning national banks' insurance sales activities.[2] Since 1963, the OCC has interpreted the reach of section 92 to permit a branch office of a bank to act as agent for insurance companies if the branch is located in a place the population of which does not exceed 5,000 inhabitants, even if the main office of the bank is located elsewhere.[3]

The Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson* examined the language of section 92 and found that section 92 suggests "a broad, not limited permission" for national banks to act as the agent for insurance sales.[4] Other courts have followed a fundamentally similar approach in establishing that while the bank or branch must be located in a "place of 5,000," section 92 does not place any geographic restrictions on potential or existing customers to whom a bank or branch may sell insurance pursuant to section 92.[5]

B. Prior OCC Precedents Analyze the Scope of Insurance Sales Activities Permissible for a Bank Insurance Agency Under Section 92

Following this judicial precedent, the OCC has interpreted section 92 to permit national banks to engage in a range of insurance agency activities in conformity with section 92's "place of 5,000" framework. The OCC's *First Union Letter* provides an extensive analysis of the scope of activities permissible under 12 USC 92. The OCC's letter considers the plain language of the statute, the legislative history, the contemporaneous practices of banks and insurance agents in 1916 when the law was enacted, the OCC's longstanding interpretive ruling under section 92, and recent judicial opinions construing the scope of section 92.[6]

In applying section 92 in the modern context, the OCC found in the *First Union Letter* that section 92, by its literal terms, consistent with congressional intent and as construed by relevant case law, does not subject national banks soliciting and selling insurance to unique restrictions or disabilities relative to insurance agents generally in a particular state. Further, given the flexibility with which banks and insurance agents operated in 1916, the OCC found it is entirely consistent with section 92's authority and purpose to allow national bank insurance agencies to employ the same variety of marketing resources and tools as are used today by other insurance agencies.

In the *Louisiana Letter*,[7] the OCC considered whether the principles of section 92 set forth in the *First Union Letter* would permit a bank insurance agency that is located in a "place of 5,000" to establish auxiliary or "satellite" offices in locations outside the "place of 5,000." Louisiana law expressly permitted insurance agencies, including a bank-established agency, to conduct business at locations in addition to the agency's business location shown on its insurance license. The OCC concluded that, for a national bank in Louisiana, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish auxiliary locations of the agency outside of the "place of 5,000" and to engage in insurance sales activities at those locations. In the *Illinois/Michigan Letter*,[8] the OCC applied the principles of section 92 set forth in the *First Union Letter* and the *Louisiana Letter* and concluded that the insurance agency subsidiary of a national bank located in a "place of 5,000" in Illinois could establish satellite offices in both Illinois and Michigan.

These letters distill several general principles to define the scope of solicitation and sales activities permissible for national banks under 12 USC 92.[9]

- The [bank insurance] agency located in the "place of 5,000" must be *bona fide.* Agents will be managed through the agency and the "place of 5,000" will be the agency's business location for licensing purposes. Each agency will be responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency also generally will be responsible for processing insurance applications, delivery of insurance policies, and collection of premiums, where consistent with procedures

[2] *See Barnett Bank of Marion County, N.A.* v. *Nelson,* 517 U.S. 25, 32; 116 S. Ct. 1103, 1108 (1996); *NBD Bank, N.A.* v. *Bennett,* 67 F.3d 629 (7th Cir. 1995).

[3] 12 CFR 7.1001 (formerly 12 CFR 7.7100).

[4] 517 U.S. 25, 32; 116 S.Ct. 1103, 1108 (1996).

[5] *See Shawmut Bank Connecticut, National Association* v. *Robert Googins,* 965 F. Supp. 304 (D. Connecticut 1997); *NBD Bank, N.A.* v. *Bennett,* 67 F.3d 629 (7th Cir. 1995); *Independent Ins. Agents* v. *Ludwig,* 997 F.2d 958 (D.C. Cir. 1993).

[6] *See Interpretive Letter No. 753* (November 4, 1996), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107.

[7] *Interpretive Letter No. 844* (October 20, 1998), *reprinted in* [Current Binder] Fed. Banking L. Rep. (CCH) ¶ 81-299.

[8] *Interpretive Letter No. 864* (May 19, 1999).

[9] The OCC noted in the *First Union Letter* that the principles described are not intended to be exhaustive and recognizes that solicitation and sales techniques may vary with different marketing strategies employed by different banks and still be consistent with the general principles described in the *First Union Letter.*

of the relevant insurance carriers. In addition, business records of the agency, including copies of customer application and policy information, and licensing, customer complaint and other compliance records, will be available at the "place of 5,000."[10]

The OCC also has concluded that a bank insurance agency and its agents may seek the same market range and use the same marketing tools and facilities as generally available for licensed insurance agencies in the state in which the bank insurance agency operates. This will generally permit the following:

- Meetings with customers and solicitations and sales of insurance by the bank's agents may generally take place at locations inside the "place of 5,000" as well as at locations outside that "place," provided the agents are managed and paid through the bank agency located in the "place of 5,000" and use that location as the agency's place of business for licensing purposes (if applicable).

- Mailings to advertise and sell insurance may originate from inside or outside of the "place of 5,000" and brochures, leaflets, and other literature alerting potential customers to the bank's insurance activities may be distributed from locations inside and outside of the "place of 5,000," including other branches of the same bank.

- Personnel at bank branches inside and outside of the "place of 5,000" may make referrals to the bank's insurance agency.

- Telephone and cybermarketing may be used and the calls and messages need not originate within the "place of 5,000."

- The bank may contract with third parties to assist the agency's sales activities, including advertising support, direct mail marketing services, telemarketing services, payments processing, and other types of "back office" support.

The OCC noted in the *First Union letter* that section 92 as enacted in 1916 generally described the ways national bank insurance agencies operated—by soliciting and selling, by collecting premiums, and by receiving commissions and fees for these services—but did not delineate or curtail how these activities were to be conducted by bank insurance agencies. The letter further provided that "Congress permitted national banks to operate effectively in the insurance business that existed in 1916, and also did not restrain banks' ability to modernize their solicitation and sales methods as needed to remain competitive as the insurance business evolved."[11] Hence, the *First Union Letter* concluded that the proposed insurance agency activities occurring both inside and outside of the "place of 5,000" were permissible under section 92.

With respect to the current request, you represent that the Agency's business location for licensing purposes is in a "place of 5,000," and that the Bank and the Agency will continue to conduct their activities in accordance with the above principles set forth in the *First Union Letter,* including conformity with New York law. Specifically, you indicate that New York law permits an insurance agency, including a bank-established agency, to conduct business at locations in addition to the agency's business location shown in its insurance license. You represent that the Agency is a licensed insurance agency in New York, and that the operations of the Agency will be conducted at satellite office locations that would be permissible under New York law for nonbank agencies as well as for insurance agencies operated by state banks or their subsidiaries.

C. New York Law Authorizing Insurance Sales Activities

The New York Insurance Law provides generally that once an insurance agency is established it may then conduct its business from other locations. The Insurance Law provides, in part:

> The headquarters location must be supervised by one or more persons licensed to do all the kinds of business for which the licensee is authorized. Any satellite office established by a licensee must be supervised by one or more persons licensed to do the kinds of business to be transacted in that office.[12]

This provision, which also requires that the NYID be notified in writing of the location of each satellite office and licensees responsible for that office, is applicable to all insurance agencies generally, whether affiliated with a bank or not.

Under New York Banking Law, banks may be licensed to sell insurance as agents. In 1997, the New York legislature adopted legislation "to ensure that banks and trust companies may exercise the same rights and powers and

[10] Some of these business records may be maintained and available at the agency in electronic form, with the original hard copy kept in off-site storage.

[11] *First Union Letter, supra,* at 33.

[12] N.Y. Ins. Law § 2129 (McKinney Supp. 1999).

engage in the same activities as national banks, on substantially the same terms and conditions as national banks."[13] The New York Banking Board adopted regulations to implement the legislation, particularly with respect to insurance agency activities of banks.[14] The regulations acknowledge the authority of national banks to conduct insurance activities directly and provide that state banks and trust companies doing business in a place of 5,000 may exercise the same authority. The New York State Banking Department ("NYSBD") also issued guidelines for state banks and trust companies establishing or acquiring corporate subsidiaries to engage in insurance sales activities. In these guidelines, the NYSBD clearly acknowledges that bank-established insurance agencies may operate from multiple locations by pointing out that licensed agencies that open offices at locations other than their headquarters must provide notification of the address and staffing of the satellite offices. In sum, both state and national banks are authorized to conduct business as an insurance agent, either directly or through subsidiaries, and insurance agent licenses may be issued directly to banks or to bank subsidiaries. Furthermore, a bank-established insurance agency may establish satellite offices throughout the state.

Given the foregoing, you have asked us not to object if the Agency, which is located in a place of 5,000 in New York, solicits and sells insurance through satellite offices in New York, as permitted under New York law. As described earlier in this letter, section 92 and the *First Union Letter* do not prohibit national banks from conducting their insurance solicitation and sales activities from outside the "place of 5,000." In fact, the *First Union Letter* recognizes that national bank insurance agencies located in a "place of 5,000" should be permitted the same marketing range and be able to use the same marketing tools and facilities as generally available under state law for licensed nonbank insurance agencies or licensed agents with offices in a "place of 5,000." Consistent with the principles established in the *First Union Letter*, the *Louisiana Letter* and the *Illinois/Michigan Letter* both concluded that, where a state permits insurance agencies to operate from more than one location, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish locations of the agency outside of the "place of 5,000" and to engage in insurance sales activities at those locations.

The current situation is fundamentally the same as that addressed in the *Louisiana Letter* and the *Illinois/Michigan Letter*. New York insurance law clearly permits a New York licensed insurance agency to solicit and sell insurance through satellite offices in New York. The Bank's insurance agency is a New York limited liability company licensed to conduct business as an insurance agency in New York. National banks with licensed insurance agencies in New York may seek the same market range and use the same marketing tools and facilities used by other New York insurance agencies. Thus, the solicitation and sale of insurance by the Agency through satellite offices as described above and in your letter of April 16, 1999, is consistent with the principles of the *First Union Letter* and with the conditions applicable to the Bank's investment in the Agency set forth in our letter of April 10, 1998.

III. Conclusion

Accordingly, based on the foregoing facts and discussion and on the representations made in your incoming letter, we conclude that under section 92, the Agency, appropriately located in a "place of 5,000," may solicit and sell insurance in the same manner permissible in New York for New York licensed insurance agencies generally and as authorized by the Agency's state insurance license. If you should have any questions, please feel free to contact Ellen Broadman or Virginia Rutledge at (202) 874-5210.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

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[13] N.Y. Banking Law § 14-g (McKinney Supp. 1999).

[14] 3 N.Y.C.C.R.R. § 6.3.

874—December 1, 1999

12 USC 92

Kirk P. Flores
Counsel
ABN AMRO North America, Inc.
135 South LaSalle Street
Chicago, ILL 60674-9135

Re: Insurance Agency Activities in New York Under 12 USC 92

Dear Mr. Flores:

This is in response to your letter requesting confirmation that ABN AMRO Insurance Services, Inc. (the "Agency"), a wholly-owned subsidiary of LaSalle Bank National Association, Chicago, Illinois (the "Bank"), may sell insurance through satellite offices of the Agency in the state of New York, in addition to the Agency's "place of 5,000" location, as permitted under New York law. Based on the facts and representations set forth in your letter and on additional information and representations you have provided, as described herein, we conclude that, under 12 USC 92, the Agency, appropriately located in a "place of 5,000," may solicit and sell insurance in the manner permissible for insurance agencies generally in the state of New York and as authorized by the Agency's state insurance license.

I. Background

For purposes of this request, the factual situation you describe involves a national bank engaged in the banking business in Illinois. After submission of the appropriate operating subsidiary application to the OCC and insurance agent license application to the Illinois Department of Insurance, and approval thereof, the Bank established an insurance agency subsidiary in a "place of 5,000" in which the Bank is located and doing business. The Bank and the Agency operate in conformity with the requirements of section 92. The Agency has applied for and expects to receive a license to sell insurance as agent in New York.

II. Discussion

A. Section 92 Authorizes Insurance Sales Activities for National Banks

Under 12 USC 92, a national bank located and doing business in a place with a population of 5,000 or fewer may act as an agent for state-authorized insurance companies by soliciting and selling insurance, collecting premiums, and receiving commissions and fees for these services from the insurance company.[1] By its terms, section 92 does not require a bank's insurance solicitation and sales activities to occur within the "place of 5000." Specifically, there is no restriction as to either the location of customers or the methodology of sale.

Congress explicitly vested the OCC in section 92 with the authority to prescribe rules and regulations concerning national banks' insurance sales activities.[2] Since 1963, the OCC has interpreted the reach of section 92 to permit a branch office of a bank to act as agent for insurance companies if the branch is located in a place the population of which does not exceed 5,000 inhabitants, even if the main office of the bank is located elsewhere.[3]

The Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson* examined the language of section 92 and found that section 92 suggests "a broad, not limited permission" for national banks to act as the agent for insurance sales.[4] Other courts have followed a fundamentally similar approach in establishing that while the bank or branch must be located in a "place of 5,000," section 92 does not place any geographic restrictions on potential or existing customers to whom a bank or branch may sell insurance pursuant to section 92.[5]

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[1] Section 92 states:

> In addition to the powers now vested by law in national banking associations...any such association located and doing business in any place the population of which does not exceed five thousand inhabitants...may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent....

12 USC 92

[2] *See Barnett Bank of Marion County, N.A.* v. *Nelson,* 517 U.S. 25, 32; 116 S. Ct. 1103, 1108 (1996); *NBD Bank, N.A. v. Bennett,* 67 F.3d 629 (7th Cir. 1995).

[3] 12 CFR 7.1001 (formerly 12 CFR 7.7100)

[4] 517 U.S. 25, 32; 116 S.Ct. 1103, 1108 (1996).

[5] *See Shawmut Bank Connecticut, National Association* v. *Robert Googins,* 965 F. Supp. 304 (D. Connecticut 1997); *NBD Bank, N.A.* v. *Bennett,* 67 F.3d 629 (7th Cir. 1995); *Independent Ins. Agents* v. *Ludwig,* 997 F.2d 958 (D.C. Cir. 1993).

B. Prior OCC Precedents Analyze the Scope of Insurance Sales Activities Permissible for a Bank Insurance Agency Under Section 92

Following this judicial precedent, the OCC has interpreted section 92 to permit national banks to engage in a range of insurance agency activities in conformity with section 92's "place of 5,000" framework. The OCC's *First Union Letter* provides an extensive analysis of the scope of activities permissible under 12 USC 92. The OCC's letter considers the plain language of the statute, the legislative history, the contemporaneous practices of banks and insurance agents in 1916 when the law was enacted, the OCC's longstanding interpretive ruling under section 92, and recent judicial opinions construing the scope of section 92.[6]

In applying section 92 in the modern context, the OCC found in the *First Union Letter* that section 92, by its literal terms, consistent with congressional intent and as construed by relevant case law, does not subject national banks soliciting and selling insurance to unique restrictions or disabilities relative to insurance agents generally in a particular state. Further, given the flexibility with which banks and insurance agents operated in 1916, the OCC found it is entirely consistent with section 92's authority and purpose to allow national bank insurance agencies to employ the same variety of marketing resources and tools as are used today by other insurance agencies.

In the *Louisiana Letter*,[7] the OCC considered whether the principles of section 92 set forth in the *First Union Letter* would permit a bank insurance agency that is located in a "place of 5,000" to establish auxiliary or "satellite" offices in locations outside the "place of 5,000." Louisiana law expressly permitted insurance agencies, including a bank-established agency, to conduct business at locations in addition to the agency's business location shown on its insurance license. The OCC concluded that, for a national bank in Louisiana, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish auxiliary locations of the agency outside of the place of 5,000 and to engage in insurance sales activities at those locations. In the *Illinois/Michigan Letter*,[8] the OCC applied the principles of section 92 set forth in the *First Union Letter* and the *Illinois/Michigan Letter* and concluded that the insurance agency subsidiary of a national bank located in a "place of 5,000" in Illinois could establish satellite offices in both Illinois and Michigan.

These letters distill several general principles to define the scope of solicitation and sales activities permissible for national banks under 12 USC 92.[9]

- The [bank insurance] agency located in the "place of 5,000" must be *bona fide*. Agents will be managed through the agency located in a "place of 5,000," which will be a business location of the agency for licensing purposes. Each agency will be responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency also generally will be responsible for processing insurance applications, delivery of insurance policies, and collection of premiums, where consistent with procedures of the relevant insurance carriers. In addition, business records of the agency, including copies of customer application and policy information, and licensing, customer complaint and other compliance records, will be available at the "place of 5,000."[10]

The OCC also has concluded that a bank insurance agency and its agents may seek the same market range and use the same marketing tools and facilities as generally available for licensed insurance agencies in the state in which the bank insurance agency operates. This will generally permit the following:

- Meetings with customers and solicitations and sales of insurance by the bank's agents may generally take place at locations inside the "place of 5,000" as well as at locations outside that "place," provided the agents are managed and paid through the bank agency located in the "place of 5,000" and use that location as the agency's place of business for licensing purposes (if applicable).
- Mailings to advertise and sell insurance may originate from inside or outside of the "place of 5,000" and brochures, leaflets, and other literature alerting potential customers to the bank's insurance activities may be distributed from locations inside and outside of the "place of 5,000," including other branches of the same bank.

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[6] *See Interpretive Letter No. 753* (November 4, 1996), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107.

[7] *Interpretive Letter No. 844* (October 20, 1998), *reprinted in* [Current Binder] Fed. Banking L. Rep. (CCH) ¶ 81-299.

[8] *Interpretive Letter No. 864* (May 19, 1999).

[9] The OCC noted in the *First Union Letter* that the principles described are not intended to be exhaustive and recognizes that solicitation and sales techniques may vary with different marketing strategies employed by different banks and still be consistent with the general principles described in the *First Union Letter*.

[10] Some of these business records may be maintained and available at the agency in electronic form, with the original hard copy kept in off-site storage.

- Personnel at bank branches inside and outside of the "place of 5,000" may make referrals to the bank's insurance agency.

- Telephone and cybermarketing may be used and the calls and messages need not originate within the "place of 5,000."

- The bank may contract with third parties to assist the agency's sales activities, including advertising support, direct mail marketing services, telemarketing services, payments processing, and other types of "back office" support.

The OCC noted in the *First Union Letter* that section 92 as enacted in 1916 generally described the ways national bank insurance agencies operated—by soliciting and selling, by collecting premiums, and by receiving commissions and fees for these services—but did not delineate or curtail how these activities were to be conducted by bank insurance agencies. The letter further provided that "Congress permitted national banks to operate effectively in the insurance business that existed in 1916, and also did not restrain banks' ability to modernize their solicitation and sales methods as needed to remain competitive as the insurance business evolved."[11] Hence, the *First Union Letter* concluded that the proposed insurance agency activities occurring both inside and outside of the "place of 5,000" were permissible under section 92.

With respect to the current request, you represent that the Agency's business location for licensing purposes is in a "place of 5,000," and that the Bank and the Agency will continue to conduct their activities in accordance with the above principles set forth in the *First Union Letter,* including conformity with Illinois and New York law. Specifically, you indicate that Illinois law permits an insurance agency, including a bank-established agency, to conduct business at locations in addition to the agency's business location shown in its insurance license. You also represent that New York law permits an Illinois-based insurance agency, including a bank-established agency, to establish satellite offices at locations in New York. You represent that the Agency is a licensed agency in Illinois, its home state, and that it will obtain a license in New York. You represent that the operations of the Agency will be conducted at satellite office locations that would be permissible under Illinois and New York law for nonbank agencies as well as for insurance agencies operated by state banks.

[11] *First Union Letter, supra,* at 33.

C. New York Law Authorizing Insurance Sales Activities

The New York Insurance Law provides generally that once an insurance agency is established it may then conduct its business from other locations. The Insurance Law provides, in part:

> The headquarters location must be supervised by one or more persons licensed to do all the kinds of business for which the licensee is authorized. Any satellite office established by a licensee must be supervised by one or more persons licensed to do the kinds of business to be transacted in that office.[12]

This provision, which also requires that the NYID be notified in writing of the location of each satellite office and licensees responsible for that office, is applicable to all insurance agencies generally, whether affiliated with a bank or not.

Under New York Banking Law, banks may be licensed to sell insurance as agents. In 1997, the New York legislature adopted legislation "to ensure that banks and trust companies may exercise the same rights and powers and engage in the same activities as national banks, on substantially the same terms and conditions as national banks."[13] The New York Banking Board adopted regulations to implement the legislation, particularly with respect to insurance agency activities of banks.[14] The regulations acknowledge the authority of national banks to conduct insurance activities directly and provide that state banks and trust companies doing business in a place of 5,000 may exercise the same authority. The New York State Banking Department ("NYSBD") also issued guidelines for state banks and trust companies establishing or acquiring corporate subsidiaries to engage in insurance sales activities. In these guidelines, the NYSBD acknowledges that bank-established insurance agencies may operate from multiple locations by pointing out that licensed agencies that open offices at locations other than their headquarters must provide notification of the address and staffing of the satellite offices. The NYSBD construes New York banking law to permit an insurance agency of a bank located in another state to establish offices in New York for the purpose of selling insurance as agent.[15] The NYID construes the New York insurance law similarly to permit a

[12] N.Y. Ins. Law § 2129 (McKinney Supp. 1999).

[13] N.Y. Banking Law § 14-g (McKinney Supp. 1999).

[14] 3 N.Y.C.C.R.R. § 6.3.

[15] Letter from Kirk P. Flores, Counsel, ABN AMRO North America, Inc., to Robert H. McCormick, Deputy Superintendent of Banks, New York State Banking Department (January 28, 1999) and response dated June 11, 1999, from Rosanne Notaro, Associate Attorney.

non-New York insurance agency to obtain a license in New York and to sell insurance from satellite offices.[16] In sum, both state and national banks are authorized to conduct business as an insurance agent, either directly or through subsidiaries, and insurance agent licenses may be issued directly to banks or to bank subsidiaries. Furthermore, under New York insurance law, a bank-established insurance agency based in another state may be licensed in New York and may establish satellite offices throughout the state.

Given the foregoing, you have asked us not to object if the Agency, which is located in a place of 5,000 in Illinois, solicits and sells insurance through satellite offices in New York, as permitted under New York law. As described earlier in this letter, section 92 and the *First Union Letter* do not prohibit national banks from conducting their insurance solicitation and sales activities from outside the "place of 5,000." In fact, the *First Union Letter* recognizes that national bank insurance agencies located in a "place of 5,000" should be permitted the same marketing range and be able to use the same marketing tools and facilities as generally available under state law for licensed nonbank insurance agencies or licensed agents with offices in a "place of 5,000." Consistent with the principles established in the *First Union Letter*, the *Louisiana Letter* and the *Illinois/Michigan Letter* concluded that, where state law permits insurance agencies to operate from more than one location, the use of the same methods and facilities available to licensed insurance agencies generally, as well as to state bank insurance agencies, includes the ability of the national bank insurance agency to establish locations of the agency outside of the "place of 5,000" and to engage in insurance sales activities at those locations.

The current situation is fundamentally the same as that addressed in the *Louisiana Letter* and the *Illinois/Michigan Letter*. Here, Illinois authorities have determined that the law of Illinois permits an Illinois licensed insurance agency to solicit and sell insurance through satellite offices in other states, and the NYID has determined that the law of New York permits the use of satellite offices in New York by an Illinois insurance agency that is licensed in New York. Thus, the solicitation and sale of insurance by the Agency through satellite offices as described above and in your letter of September 29, 1999, is consistent with the principles of the *First Union Letter.*

III. Conclusion

Accordingly, based on the foregoing facts and discussion and on the representations made in your incoming letter, we conclude that under section 92, the Agency, appropriately located in a "place of 5,000," may solicit and sell insurance in the same manner permissible in New York for New York licensed insurance agencies generally and as authorized by the Agency's state insurance license. If you should have any questions, please feel free to contact Ellen Broadman or Virginia Rutledge at (202) 874-5210.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

[16] The NYID has orally confirmed to counsel for the Bank that the Agency may be licensed as an insurance agency in New York, that its licensing address may be the Agency's address in the "place of 5,000" in Illinois. The NYID also orally confirmed that licensed insurance agencies, including bank-established agencies, may establish multiple offices in New York.

Mergers—October 1 to December 31, 1999

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Nonaffiliated mergers (mergers consummated involving two or more nonaffiliated operating banks) 177

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Affiliated mergers (mergers consummated involving affiliated operating banks) 179

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Mergers—October 1 to December 31, 1999

Most transactions in this section do not have accompanying decisions. In those cases, the OCC reviewed the competitive effects of the proposals by using its standard procedures for determining whether the transaction has minimal or no adverse competitive effects. The OCC found the proposals satisfied its criteria for transactions that clearly had no or minimal adverse competitive effects. In addition, the Attorney General either filed no report on the proposed transaction or found that the proposal would not have a significantly adverse effect on competition.

Nonaffiliated mergers (mergers consummated involving two or more nonaffiliated operating banks), from October 1 to December 31, 1999

Title and location (charter number)	Total assets
Missouri	
The Boone County National Bank of Columbia, Columbia (001770)	738,794,000
and The State Bank of Hallsville, Hallsville	22,927,000
merged on November 19, 1999 under the title of The Boone County National Bank of Columbia, Columbia (001770)	763,340,000
Texas	
First State Bank of Canadian, National Association, Canadian (023513)	28,593,000
and The Follett National Bank, Follett (012101)	30,073,000
merged on October 15, 1999 under the title of First State Bank of Canadian, National Association, Canadian (023513)	56,411,000

Nonaffiliated mergers—thrift (mergers consummated involving nonaffiliated national banks and savings and loan associations), from October 1 to December 31, 1999

Title and location (charter number)	Total assets
Oklahoma	
Local Oklahoma Bank, National Association, Oklahoma City (023900)	2,192,571,000
and Guthrie Federal Savings Bank, Guthrie	46,850,000
merged on October 15, 1999 under the title of **Local Oklahoma Bank, National Association, Oklahoma City** (023900)	2,239,421,000

Affiliated mergers (mergers consummated involving affiliated operating banks), from October 1 to December 31, 1999

Title and location (charter number)	Total assets
Arkansas	
The City National Bank of Fort Smith, Fort Smith (010609)	526,679,000
and Commercial Bank at Alma, Alma	76,163,000
merged on October 22, 1999 under the title of **The City National Bank of Fort Smith, Fort Smith** (010609)	602,842,000
Florida	
Firstar Bank Florida, National Association, West Palm Beach (023747)	240,000
and Firstar Trust Company of Florida, National Association, West Palm Beach (021260)	2,214,000
merged on August 13, 1999 under the title of **Firstar Bank Florida, National Association, West Palm Beach** (023747)	2,214,000
Illinois	
The Peoples National Bank in Lawrenceville, Lawrenceville (008846)	93,908,000
and Old National Bank in Evansville, Evansville (012444) on November 5, 1999	6,138,807,000
and ONB Bloomington, National Association, Bloomington (023836) on November 4, 1999	384,673,000
merged on those respective dates under the title of **Old National Bank, Lawrenceville** (008846)	6,617,388,000
Indiana	
Old National Bank in Evansville, Evansville (012444)	2,277,636,000
and Bank of Western Indiana, Covington on November 4, 1999	134,717,000
and Morganfield National Bank, Morganfield (007490) on October 7, 1999	113,698,000
and The First National Bank of Harrisburg, Harrisburg (004003) on November 4, 1999	214,713.000
and First-Citizens Bank and Trust Company, Greencastle on November 4, 1999	180,125,000
and The First National Bank of Oblong, Oblong (008607) on November 4, 1999	105,116,000
and Security Bank & Trust Co., Vincennes on October 7, 1999	178,195,000
and Farmers Bank and Trust Company of Madisonville, Madisonville on October 7, 1999	203,527,000
and First State Bank, Greenville on October 7, 1999	216,630,000
and The City National Bank of Fulton, Fulton (006167) on October 7, 1999	98,120,000
and The Merchants National Bank of Terre Haute, Terre Haute (023076) on September 9, 1999	631,412,000
and Dubois County Bank, Jasper on September 9, 1999	353,189,000
and Palmer-American National Bank of Danville, Danville (004731) on November 4, 1999	305,369,000
merged on those respective dates under the title of **Old National Bank, Evansville** (012444)	5,969,098,000
Old National Bank, Evansville (012444)	3,019,602,000
and United Southwest Bank, Washington	220,257,000
merged on November 4, 1999 under the title of **Old National Bank, Evansville** (012444)	3,239,859,000
Iowa	
New National Bank of Davenport, Davenport (023827)	3,000,000
and Southeast National Bank of Moline, Moline (014945)	123,715,000
merged on December 17, 1999 under the title of **Southeast National Bank of Moline, Davenport** (023827)	123,715,000
Minnesota	
New Woodlands National Bank, Hinckley (023926)	33,147,000
and Woodlands National Bank, Onamia (022981)	24,653,000
merged on November 1, 1999 under the title of **Woodlands National Bank, Hinckley** (023926)	60,327,000
U.S. Bank National Association, Minneapolis (013405)	69,781,000,000
and Santa Monica Bank, Santa Monica	1,409,000,000
and Southern California Bank, Newport Beach	1,114,000,000
merged on November 15, 1999 under the title of **U.S. Bank National Association, Minneapolis** (013405)	72,873,000,000
Bremer Bank, National Association, South St. Paul (023290)	447,611,000
and The First State Bank of Eden Prairie, Eden Prairie	50,972,000
and Princeton Bank, Princeton	161,475,000
merged on October 11, 1999 under the title of **Bremer Bank, National Association, South St. Paul** (023290)	660,058,000
Bremer Bank, National Association, Brainerd (023286)	187,565,000
and The First National Bank of Aitkin, Aitkin (006803)	41,943,000
merged on October 31, 1999 under the title of **Bremer Bank, National Association, Brainerd** (023286)	229,423,000

Affiliated mergers (continued)

Title and location (charter number)	Total assets
Missouri	
BC National Banks, Butler (017100)	61,291,000
and Citizens Bank of Missouri, Harrisonville	23,774,000
merged on August 5, 1999 under the title of **BC National Banks, Butler** (017100)	84,734,000
New Mexico	
First Security Bank of New Mexico, National Association, Albuquerque (013814)	2,461,631,000
and First Security Bank of Southern New Mexico, National Association, Las Cruces (007720)	442,868,000
merged on November 5, 1999 under the title of **First Security Bank of New Mexico, National Association, Albuquerque** (013814)	2,904,499,000
New York	
Keytrust Company National Association, Albany (023313)	32,697,000
and Society Trust Company of New York, Albany	1,452,000
merged on December 1, 1999 under the title of **Keytrust Company National Association, Albany** (023313)	34,149,000
North Carolina	
First Union National Bank, Charlotte (000001)	222,483,323,000
and Meridian Trust Company, Reading on December 1, 1999	33,872,000
and Keystone Trust Company, Portsmouth on July 16, 1999	422,000
merged on those respective dates under the title of **First Union National Bank, Charlotte** (000001)	222,517,195,000
Bank of America, National Association, Charlotte (013044)	557,532,000,000
and Bank of America Utah, National Association, Salt Lake City (023976)	29,622,000,000
merged on December 1, 1999 under the title of **Bank of America, National Association, Charlotte** (013044)	586,001,000,000
Ohio	
Firstar Bank, National Association, Cincinnati (000024)	16,750,000,000
and Firstar Bank Milwaukee, National Association, Milwaukee (000064) on October 15, 1999	8,375,000,000
and Firstar Bank Wisconsin, Madison on September 10, 1999	3,969,000,000
and Firstar Bank Wausau, National Association, Wausau (001998) on October 15, 1999	2,940,000
and Firstar Bank Burlington, National Association, Burlington (014395) on September 10, 1999	2,183,000
and Firstar Bank of Minnesota, National Association, St. Paul (016128) on August 13, 1999	2,696,000,000
and Firstar Bank Florida, National Association, West Palm Beach (023747) on August 13, 1999	2,214,000
merged on those respective dates under the title of **Firstar Bank, National Association, Cincinnati** (000024)	36,683,000,000
Sky Trust, National Association, Pepper Pike (023967)	17,000,000
and Mid AM Private Trust, National Association, Cincinnati (023245)	2,000,000
merged on December 30, 1999 under the title of **Sky Trust, National Association, Pepper Pike** (023967)	19,000,000
Firstar Bank, National Association, Cincinnati (000024)	23,305,845,000
and Firstar Metropolitan Bank & Trust, Phoenix	236,486,000
merged on November 12, 1999 under the title of **Firstar Bank, National Association, Cincinnati** (000024)	23,542,331,000
Oklahoma	
Bank of Oklahoma, National Association, Tulsa (013679)	5,359,811,000
and The First National Bank and Trust Company of Muskogee, Muskogee (004385)	233,104,000
merged on October 15, 1999 under the title of **Bank of Oklahoma, National Association, Tulsa** (013679)	5,592,915,000
South Carolina	
First National Bank, Orangeburg (013918)	600,021,000
and FirstBank, National Association, Beaufort (022834)	94,506,000
merged on August 27, 1999 under the title of **First National Bank, Orangeburg** (013918)	694,527,000

Affiliated mergers (continued)

Title and location (charter number)	Total assets
South Dakota	
First National Bank South Dakota, Yankton (022764)	316,354,000
and Commercial Trust and Savings Bank, Mitchell	171,594,000
merged on November 5, 1999 under the title of **First National Bank South Dakota, Yankton** (022764)	488,744,000
Texas	
Norwest Bank Texas, National Association, San Antonio (014208)	12,389,288,000
and First State Bank, Rio Vista	194,163,000
merged on September 18, 1999 under the title of **Norwest Bank Texas, National Association, San Antonio** (014208)	12,597,294,000

Affiliated mergers—thrift (mergers consummated involving affiliated national banks and savings and loan associations), from October 1 to December 31, 1999

Title and location (charter number)	Total assets
Illinois	
Amcore Bank, National Association, Rockford, South Beloit (013652)	1,857,094,000
and Amcore Bank, National Association, Rock River Valley, Dixon (014366)	637,227,000
and Amcore Bank, National Association, Northwest, Woodstock (014137)	265,550,000
and Amcore Bank, National Association, North Central, Mendota (013611)	442,877,000
and Amcore Bank, National Association, South Central, Monroe (000230)	630,680,000
and Amcore Bank, Aledo, Aledo	141,769,000
and Amcore Bank, Clinton, Clinton	241,176,000
and Amcore Bank, Montello, Montello	73,870,000
and Amcore Bank, Central Wisconsin, Baraboo	241,176,000
merged on October 1, 1999 under the title of Amcore Bank, National Association, South Beloit (013652)	4,158,807,000

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Annual summary of nonaffiliated mergers (mergers consummated involving two or more nonaffiliated operating banks), January 1 to December 31, 1999

Title and location (charter number)	Total assets
Alabama	
SouthTrust Bank, National Association, Birmingham (014569)	35,451,823,000
and Langcreek National Bank, Houston (018402)	136,000,000
merged on March 12, 1999 under the title of **SouthTrust Bank, National Association, Birmingham** (014569)	35,603,438,000
SouthTrust Bank, National Association, Birmingham (014569)	38,933,239,000
and Navigation Bank, Houston	80,809,000
merged on July 30, 1999 under the title of **SouthTrust Bank, National Association, Birmingham** (014569)	39,014,048,000
California	
City National Bank, Beverly Hills (014695)	6,268,705,000
and American Pacific State Bank, Sherman Oaks	413,949,000
merged on August 27, 1999 under the title of **City National Bank, Beverly Hills** (014695)	6,654,593,000
Delaware	
MBNA America Bank, National Association, Wilmington (022381)	21,632,664,000
and PNC National Bank, Wilmington (023227)	4,051,838,000
merged on March 29, 1999 under the title of **MBNA America Bank, National Association, Wilmington** (022381)	24,501,166,000
Louisiana	
Hibernia National Bank, New Orleans (013688)	14,020,332,000
and Beaumont Trust Company, National Association, Beaumont (023794)	200,000
merged on May 21, 1999 under the title of **Hibernia National Bank, New Orleans** (013688)	14,020,532,000
Missouri	
The Boone County National Bank of Columbia, Columbia (001770)	645,262,000
and Sturgeon State Bank, Sturgeon	37,642,000
merged on February 16, 1999 under the title of **The Boone County National Bank of Columbia, Columbia** (001770)	685,697,000
The Boone County National Bank of Columbia, Columbia (001770)	738,794,000
and The State Bank of Hallsville, Hallsville	22,927,000
merged on November 19, 1999 under the title of **The Boone County National Bank of Columbia, Columbia** (001770)	763,340,000
Nebraska	
Enterprise Bank, National Association, Omaha (022233)	77,230,000
and The First National Bank of Akron, Akron (018175)	12,385,000
merged on March 19, 1999 under the title of **Enterprise Bank, National Association, Omaha** (022233)	88,823,000
New Jersey	
Valley National Bank, Passaic (015790)	5,016,163,000
and The Ramapo Bank, Wayne Township	327,169,000
merged on June 11, 1999 under the title of **Valley National Bank, Passaic** (015790)	5,343,332,000
New Mexico	
The First National Bank of New Mexico, Clayton (015259)	46,556,000
and Zia New Mexico Bank, Tucumcari	13,450,000
merged on April 23, 1999 under the title of **The First National Bank of New Mexico, Clayton** (015259)	60,006,000
Pennsylvania	
National Penn Bank, Boyertown (002137)	1,670,809,000
and The Elverson National Bank, Elverson	301,814,000
merged on January 4, 1999 under the title of **National Penn Bank, Boyertown** (002137)	1,972,623,000
Chase Manhattan Trust Company, National Association, Pittsburgh (023548)	109,831,000
and PNC Trust Company Pennsylvania, National Association, Pittsburgh (023762)	1,250,000
merged on December 1, 1998 under the title of **Chase Manhattan Trust Company, National Association, Pittsburgh** (023548)	220,515,000

Annual summary of nonaffiliated mergers (continued)

Title and location (charter number)	Total assets
County National Bank, Clearfield (013998)	448,100,000
and The First National Bank of Spangler, Spangler (007181)	32,999,000
merged on August 18, 1999 under the title of **County National Bank, Clearfield** (013998)	481,099,000
South Carolina	
FirstBank, National Association, Beaufort (022834)	94,506,000
and FirstBank of the Midlands, National Association (023609)	14,767,000
merged on July 31, 1999 under the title of **FirstBank, National Association, Beaufort** (022834)	109,273,000
Tennessee	
First Farmers & Merchants National Bank of Columbia, Columbia (014710)	562,984,000
and Farmers & Merchants Bank, White Bluff	21,167,000
merged on February 5, 1999 under the title of **First Farmers & Merchants National Bank of Columbia, Columbia** (014710)	584,151,000
Union Planters Bank, National Association, Memphis (013349)	27,406,926,000
and Republic National Bank of Miami, Coral Gables (015555)	1,837,400,000
merged on July 16, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	28,831,830,000
National Bank of Commerce, Memphis (013681)	4,585,274,000
and First Bank & Trust, Mount Juliet	260,944,000
merged on September 17, 1999 under the title of **National Bank of Commerce, Memphis** (013681)	5,119,218,000
Texas	
The City National Bank of Sulphur Springs, Sulphur Springs (003989)	119,358,000
and First National Bank of Sulphur Springs, Sulphur Springs (016832)	25,631,000
merged on December 31, 1998 under the title of **The City National Bank of Sulphur Springs, Sulphur Springs** (003989)	145,000,000
Hibernia National Bank of Texas, Texarkana (003785)	997,493,000
and First Service Bank, Marshall	322,291,000
merged on March 8, 1999 under the title of **Hibernia National Bank of Texas, Texarkana** (003785)	1,319,784,000
The State National Bank of Iowa Park, Iowa Park (013614)	60,761,000
and Electra State Bank and Trust Company, Electra	37,640,000
and Windthorst National Bank, Windthorst (020472)	28,421,000
merged on May 13, 1999 under the title of **The State National Bank of Texas, Iowa Park** (013614)	126,822,000
The First National Bank of Hughes Springs, Hughes Springs (006922)	116,936,000
and The First Bank of Jefferson, Jefferson (014648)	35,674,000
merged on August 9, 1999 under the title of **The First National Bank of Hughes Springs, Hughes Springs** (006922)	139,492,000
Hamlin National Bank, Hamlin (012700)	59,740,000
and The Farmers National Bank of Rule, Texas, Rule (014539)	16,354,000
merged on September 3, 1999 under the title of **Hamlin National Bank, Hamlin** (012700)	76,094,000
First State Bank of Canadian, National Association, Canadian (023513)	28,593,000
and The Follett National Bank, Follett (012101)	30,073,000
merged on October 15, 1999 under the title of **First State Bank of Canadian, National Association, Canadian** (023513)	56,411,000
Wyoming	
Norwest Bank Wyoming, National Association, Casper (010533)	*4,581,695,000
and Riverton State Bank, Riverton	61,896,000
and Dubois National Bank, Dubois (015205)	22,923,000
merged on May 15, 1999 under the title of **Norwest Bank Wyoming, National Association, Casper** (010533)	2,958,930,000

*Note: Adjustment of $1,707,584 done to resulting national bank prior to consummation.

Annual summary of nonaffiliated mergers—thrift (mergers consummated involving nonaffiliated national banks and savings and loan associations), January 1 to December 31, 1999

Title and location (charter number)	Total assets
Mississippi	
National Bank of Commerce, Starkville (003656)	777,053,000
and First Federal Bank for Savings, Columbus	157,192,000
merged on August 31, 1999 under the title of **Columbus National Bank of Commerce, Starkville** (003656)	971,832,000
New Jersey	
United National Bank, Bridgewater (005621)	1,508,573,000
and Raritan Savings Bank, Bridgewater	433,325,000
merged on March 31, 1999 under the title of **United National Bank, Bridgewater** (005621)	1,941,898,000
New York	
City National Bank and Trust Company of Gloversville, Gloversville (009305)	255,568,000
and Gloversville Federal Savings and Loan Association, Gloversville	68,732,000
merged on June 1, 1999 under the title of **City National Bank and Trust Company of Gloversville, Gloversville** (009305)	329,460,000
North Carolina	
The First National Bank of Shelby, Shelby (006776)	392,396,000
and First Carolina Federal Savings Bank, Kings Mountain	94,726,000
merged on April 2, 1999 under the title of **The First National Bank of Shelby, Shelby** (006776)	479,868,000
Oklahoma	
Local Oklahoma Bank, National Association, Oklahoma City (023900)	2,192,571,000
and Guthrie Federal Savings Bank, Guthrie	46,850,000
merged on October 15, 1999 under the title of **Local Oklahoma Bank, National Association, Oklahoma City** (023900)	2,232,000,000

Annual summary of affiliated mergers (mergers consummated involving affiliated operating banks), January 1 to December 31, 1999

Title and location (charter number)	Total assets
Alabama	
National Bank of Commerce, Tuscaloosa (022907)	95,000,000
and National Bank of the South, Tuscaloosa (022777)	36,026,000
merged on December 31, 1998 under the title of **National Bank of Commerce, Tuscaloosa** (022907)	128,026,000
SouthTrust Bank, National Association, Birmingham (014569)	38,933,239,000
and First Bank and Trust, Groves	519,171,000
merged on August 13, 1999 under the title of **SouthTrust Bank, National Association, Birmingham** (014569)	39,580,378,000
Arizona	
Bank of America National Association, Phoenix (022106)	4,899,313,000
and NationsBank of Delaware, National Association, Dover (022279)	7,785,570,000
merged on March 31, 1999 under the title of **Bank of America, National Association (USA), Phoenix** (022106)	12,684,883,000
Arkansas	
The Malvern National Bank, Malvern (023202)	202,295,000
and First National Bank of Sheridan, Sheridan (023200)	33,702,000
merged on October 1, 1998 under the title of **The Malvern National Bank, Malvern** (023202)	235,997,000
Simmons First National Bank, Pine Bluff (006680)	733,245,000
and American State Bank, Charleston	89,619,000
merged on March 26, 1999 under the title of **Simmons First National Bank, Pine Bluff** (006680)	822,864,000
The Citizens National Bank of Hope, Hope (010579)	228,908,000
and Peoples Bank and Loan Co., Lewisville	34,912,000
merged on April 8, 1999 under the title of **The Citizens National Bank of Hope, Hope** (010579)	263,820,000
The First National Bank of Fort Smith, Fort Smith (001950)	559,160,000
and River Valley Bank and Trust, Lavaca	75,826,000
merged on June 4, 1999 under the title of **The First National Bank of Fort Smith, Fort Smith** (001950)	634,986,000
The City National Bank of Fort Smith, Fort Smith (010609)	526,679,000
and Commercial Bank at Alma, Alma	76,163,000
merged on October 22, 1999 under the title of **The City National Bank of Fort Smith, Fort Smith** (010609)	602,842,000
California	
First Coastal Bank, National Association, El Segundo (018454)	76,704,000
and American Independent Bank, National Association, Gardena (018092)	38,275,000
merged on March 8, 1999 under the title of **First Coastal Bank, National Association, El Segundo** (018454)	114,979,000
City National Bank, Beverly Hills (014695)	6,268,705,000
and CNB SUB ("Non-operating" Subsidiary of City National Bank), Beverly Hills	1,000
and American Pacific State Bank, Sherman Oaks	413,949,000
merged on August 27, 1999 under the title of **City National Bank, Beverly Hills** (014695)	6,654,593,000
Colorado	
Norwest Bank Colorado, National Association, Denver (003269)	9,906,710,000
and Community Bank of Parker, Parker	71,663,000
merged on April 24, 1999 under the title of **Norwest Bank Colorado, National Association, Denver** (003269)	9,978,373,000
First National Bank of the Rockies, Meeker (007435)	100,138,000
and Yampa Valley National Bank, Hayden (016919)	39,936,000
merged on July 1, 1999 under the title of **First National Bank of the Rockies, Meeker** (007435)	137,310,000
Delaware	
FCC National Bank, Wilmington (017762)	11,280,014,000
and First USA Bank, National Association, Wilmington (023649)	7,837,145,000
merged on September 17, 1999 under the title of **First USA Bank, National Association, Wilmington** (017762)	15,528,628,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
Florida	
West Coast Guaranty Bank, National Association, Sarasota (023829)	147,923,000
and West Coast Bank, Sarasota	115,020,000
merged on February 16, 1999 under the title of **West Coast Guaranty Bank, National Association, Sarasota** (023829)	262,943,000
Firstar Bank Florida, National Association, West Palm Beach (023747)	240,000
and Firstar Trust Company of Florida, National Association, West Palm Beach (021260)	2,214,000
merged on August 13, 1999 under the title of **Firstar Bank Florida, National Association, West Palm Beach** (023747)	2,214,000
Georgia	
Georgia First Bank, National Association, Gainesville (023837)	84,630,000
and Gwinnett National Bank, Duluth (021839)	36,361,000
merged on February 12, 1999 under the title of **Georgia First Bank, National Association, Gainesville** (023837)	120,991,000
The First National Bank & Trust Company, Tennille (006207)	108,780,000
and Bank of Wadley, Wadley	22,621,000
and Ogeechee Valley Bank, Millen	24,260,000
merged on March 1, 1999 under the title of **The First National Bank & Trust Company, Louisville** (006207)	148,780,000
Illinois	
The Old Second National Bank of Aurora, Aurora (004596)	532,425,000
and The Old Second Community Bank of North Aurora, North Aurora	59,822,000
and The Old Second Community Bank of Aurora, Aurora	45,132,000
merged on December 31, 1998 under the title of **The Old Second National Bank of Aurora, Aurora** (004596)	637,364,000
The Merchants National Bank of Aurora, Aurora (003854)	715,956,000
and Fox Valley Bank, St. Charles	81,011,000
and Hinckley State Bank, Hinckley	64,080,000
merged on December 14, 1998 under the title of **The Merchants National Bank of Aurora, Aurora** (003854)	861,047,000
LaSalle National Bank, Chicago (014362)	21,126,000
and LaSalle Bank National Association, Chicago (014450)	6,150,000
merged on April 30, 1999 under the title of **LaSalle Bank National Association, Chicago** (014362)	27,198,000
Buena Vista National Bank of Chester, Chester (014479)	78,381,000
and Bank of Evansville, Evansville	8,110,000
merged on January 1, 1999 under the title of **Buena Vista National Bank of Chester, Chester** (014479)	86,491,000
Castle Bank, National Association, Sandwich (023817)	132,862,000
and The Bank of Yorkville, Yorkville	79,014,000
merged on June 25, 1999 under the title of **Castle Bank National Association, Sandwich** (023817)	211,876,000
The Mid-City National Bank of Chicago, Chicago (013684)	786,038,000
and Damen National Bank, Schaumburg (023233)	220,204,000
merged on July 1, 1999 under the title of **The Mid-City National Bank of Chicago, Chicago** (013684)	963,069,000
The Peoples National Bank in Lawrenceville, Lawrenceville (008846)	93,908,000
and Old National Bank in Evansville, Evansville (012444) on November 5, 1999	6,138,807,000
and ONB Bloomington, National Association, Bloomington (023836) on November 4, 1999	384,673,000
merged on those respective dates under the title of **Old National Bank, Lawrenceville** (008846)	6,617,388,000
Indiana	
The Merchants National Bank of Terre Haute, Terre Haute (023076)	657,128,000
and Dulaney National Bank, Marshall (004759)	42,235,000
merged on May 13, 1999 under the title of **The Merchants National Bank of Terre Haute, Terre Haute** (023076)	700,363,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
Old National Bank in Evansville, Evansville (012444)	2,277,636,000
and Bank of Western Indiana, Covington on November 4, 1999	134,717,000
and Morganfield National Bank, Morganfield (007490) on October 7, 1999	113,698,000
and The First National Bank of Harrisburg, Harrisburg (004003) on November 4, 1999	214,713,000
and First-Citizens Bank and Trust Company, Greencastle on November 4, 1999	180,125,000
and The First National Bank of Oblong, Oblong (008607) on November 4, 1999	105,116,000
and Security Bank & Trust Co., Vincennes on October 7, 1999	178,195,000
and Farmers Bank and Trust Company of Madisonville, Madisonville on October 7, 1999	203,527,000
and First State Bank, Greenville on October 7, 1999	216,630,000
and The City National Bank of Fulton, Fulton (006167) on October 7, 1999	98,120,000
and The Merchants National Bank of Terre Haute, Terre Haute (023076) on September 9, 1999	631,412,000
and Dubois County Bank, Jasper on September 9, 1999	353,189,000
and Palmer-American National Bank of Danville, Danville (004731) on November 4, 1999	305,369,000
merged on those respective dates under the title of **Old National Bank, Evansville** (012444)	5,969,098,000
Old National Bank, Evansville (012444)	3,019,602,000
and United Southwest Bank, Washington	220,257,000
merged on November 4, 1999 under the title of **Old National Bank, Evansville** (012444)	3,239,859,000
Bank One, Indiana, National Association, Indianapolis (013759)	8,555,604,000
and NBD Bank, National Association, Indianapolis (000984)	7,099,309,000
and NBD Bank, Elkhart	728,032,000
merged on June 21, 1999 under the title of **Bank One, Indiana, National Association, Indianapolis** (013759)	16,071,745,000
Iowa	
New National Bank of Davenport, Davenport (023827)	3,000,000
and Southeast National Bank of Moline, Moline (014945)	123,715,000
merged on December 17, 1999 under the title of **Southeast National Bank of Moline, Davenport** (023827)	123,715,000
Kansas	
The Exchange National Bank and Trust, Atchison (002758)	123,380,000
and The Farmers and Merchants State Bank, Effingham	24,206,000
merged on September 10, 1999 under the title of **The Exchange National Bank and Trust Company of Atchison, Atchison** (002758)	147,586,000
Kentucky	
Community First Bank, National Association, Maysville (003291)	77,898,000
and Community First Bank of Kentucky, Warsaw	85,646,000
merged on June 25, 1999 under the title of **Community First Bank, National Association, Maysville** (003291)	163,544,000
Citizens National Bank of Paintsville, Paintsville (013023)	161,126,000
and The Bank Josephine, Salyersville	109,633,000
merged on May 25, 1999 under the title of **Citizens National Bank of Paintsville, Paintsville** (013023)	270,759,000
Louisiana	
Hibernia National Bank, New Orleans (013688)	12,514,236,000
and Hibernia National Bank of Texas, Texarkana (003785)	1,005,839,000
merged on January 1, 1999 under the title of **Hibernia National Bank, New Orleans** (013688)	13,193,393,000
Minnesota	
Norwest Bank Minnesota South, National Association, Rochester (002088)	2,227,810,000
and First National Bank of Monticello, Monticello (018366)	83,891,000
merged on March 6, 1999 under the title of **Norwest Bank Minnesota South, National Association, Rochester** (002088)	2,311,701,000
The First National Bank of Hudson, Woodbury (000095)	155,261,000
and Merchants State Bank of North Branch, North Branch	53,593,000
merged on June 30, 1999 under the title of **The First National Bank of Hudson, Woodbury** (000095)	208,855,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
U.S. Bank National Association, Minneapolis (013405)	67,509,000,000
and Zapp National Bank of St. Cloud, St. Cloud (014805)	318,000,000
and The First National Bank of Little Falls, Little Falls (004034)	68,000,000
and Melrose State Bank, Melrose	59,000,000
merged on March 13, 1999 under the title of **U.S. Bank National Association, Minneapolis** (013405)	67,926,000,000
Community National Bank, Northfield (013350)	73,753,000
and Roseville Community Bank, National Association, Roseville (022046)	49,047,000
merged on May 10, 1999 under the title of **Community National Bank, Northfield** (013350)	122,800,000
U.S. Bank National Association, Minneapolis (013405)	67,367,865,000
and Northwest National Bank, Vancouver (016523)	386,024,000
merged on May 7, 1999 under the title of **U.S. Bank National Association, Minneapolis** (013405)	67,753,880,000
Norwest Bank Minnesota, National Association, Minneapolis (002006)	29,698,644,000
and Eastern Heights Bank, Maplewood	465,707,000
merged on September 11, 1999 under the title of **Norwest Bank Minnesota, National Association, Minneapolis** (002006)	30,265,095,000
U.S. Bank National Association, Minneapolis (013405)	69,713,000,000
and Bank of Commerce, San Diego	638,000,000
merged on July 15, 1999 under the title of **U.S. Bank National Association, Minneapolis** (013405)	70,600,000,000
New Woodlands National Bank, Hinckley (023926)	33,147,000
and Woodlands National Bank, Onamia (022981)	24,653,000
merged on November 1, 1999 under the title of **Woodlands National Bank, Hinckley** (023926)	60,327,000
U.S. Bank National Association, Minneapolis (013405)	69,781,000,000
and Santa Monica Bank, Santa Monica	1,409,000,000
and Southern California Bank, Newport Beach	1,114,000,000
merged on November 15, 1999 under the title of **U.S. Bank National Association, Minneapolis** (013405)	72,873,000,000
Marquette Bank, National Association, Golden Valley (022831)	1,168,025,000
and Marquette Bank Rochester, National Association, Rochester (023214)	229,110,000
merged on September 30, 1999 under the title of **Marquette Bank, National Association, Golden Valley** (022831)	1,382,445,000
Bremer Bank, National Association, Marshall (023294)	156,890,000
and State Bank of Edgerton, Edgerton	38,573,000
merged on September 30, 1999 under the title of **Bremer Bank, National Association, Marshall** (023294)	195,463,000
Bremer Bank, National Association, South St. Paul (023290)	447,611,000
and The First State Bank of Eden Prairie, Eden Prairie	50,972,000
and Princeton Bank, Princeton	161,475,000
merged on October 11, 1999 under the title of **Bremer Bank, National Association, South St. Paul** (023290)	660,058,000
Bremer Bank, National Association, Brainerd (023286)	187,565,000
and The First National Bank of Aitkin, Aitkin (006803)	41,943,000
merged on October 31, 1999 under the title of **Bremer Bank, National Association, Brainerd** (023286)	229,423,000
Mississippi	
National Bank of Commerce, Starkville (003656)	563,355,000
and National Bank of Commerce, Tuscaloosa (022907)	128,026,000
merged on December 31, 1998 under the title of **National Bank of Commerce, Starkville** (003656)	691,381,000
National Bank of Commerce, Starkville (003656)	691,381,000
and The First National Bank of West Point, West Point (002891)	83,362,000
merged on December 31, 1998 under the title of **National Bank of Commerce, Starkville** (003656)	774,743,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
Missouri	
Mercantile Trust Company National Association, St. Louis (022666)	44,064,000
and Pennyrile Citizens Bank and Trust Company, Hopkinsville	738,000
merged on February 19, 1999 under the title of **Mercantile Trust Company National Association, St. Louis** (022666)	44,802,000
Commerce Bank, National Association, Kansas City (018112)	9,196,823,000
and The Citizens National Bank in Independence, Independence (013924)	95,695,000
merged on June 4, 1999 under the title of **Commerce Bank, National Association, Kansas City** (018112)	9,292,518,000
TeamBank, National Association, Freeman (003350)	256,770,000
and TeamBank Nebraska, Bellevue	34,347,000
merged on June 26, 1999 under the title of **TeamBank, National Association, Freeman** (003350)	291,117,000
Commerce Bank, National Association, Kansas City (018112)	9,196,823,000
and The Columbus State Bank, Columbus on July 8, 1999	79,533,000
and City National Bank of Pittsburg, Pittsburg (015503) on August 13, 1999	126,705,000
merged on those respective dates under the title of **Commerce Bank, National Association, Kansas City** (018112)	9,449,796,000
BC National Banks, Butler (017100)	61,291,000
and Citizens Bank of Missouri, Harrisonville	23,774,000
merged on August 5, 1999 under the title of **BC National Banks, Butler** (017100)	84,734,000
UMB Bank, National Association, Kansas City (013936)	4,342,210,000
and UMB Bank, Northwest, St. Joseph	150,010,000
merged on July 31, 1999 under the title of **UMB Bank, National Association, Kansas City** (013936)	4,492,220,000
UMB Bank Cass County, National Association, Kansas City (023920)	29,182,000
and UMB Bank, National Association, Kansas City (013936) on August 28, 1999	4,492,220,000
and UMB Bank of St. Louis, National Association, St. Louis (021727) on September 25, 1999	1,088,066,000
and UMB Bank, Boonville, Boonville on September 11, 1999	39,994,000
and UMB Bank, Jefferson City, Jefferson City on September 11, 1999	44,125,000
and UMB Bank, North Central, Brookfield on August 28, 1999	73,327,000
and UMB Bank, Northeast, Monroe City on September 25, 1999	71,991,000
and UMB Bank Southwest, Carthage on August 28, 1999	292,199,000
and UMB Bank, Warrensburg, Warrensburg on September 11, 1999	109,592,000
and UMB First State Bank of Morrisonville, Morrisonville on September 25, 1999	11,349,000
merged on those respective dates under the title of **UMB Bank, National Association, Kansas City** (023920)	6,259,450,000
Nebraska	
First National Bank Northeast, Lyons (006221)	108,874,000
and The Farmers and Merchants National Bank of Oakland, Oakland (010022)	23,720,000
merged on April 30, 1999 under the title of **First National Bank Northeast, Lyons** (006221)	132,743,000
The First National Bank & Trust Company of Beatrice, Beatrice (002357)	109,245,000
and Farmers Bank of Clatonia, Clatonia	9,204,000
merged on June 30, 1999 under the title of **The First National Bank & Trust Company of Beatrice, Beatrice** (002357)	118,449,000
The First National Bank & Trust Company of Beatrice, Beatrice (002357)	109,245,000
and The Blue Springs State Bank, Blue Springs	15,881,000
merged on July 2, 1999 under the title of **The First National Bank & Trust Company of Beatrice, Beatrice** (002357)	134,330,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
New Jersey	
Commerce Bank/Shore, National Association, Forked River (021863)	454,758,000
and Tinton Falls State Bank, Tinton Falls	186,730,000
merged on January 15, 1999 under the title of **Commerce Bank/Shore, National Association, Forked River** (021863)	641,488,000
New Mexico	
Norwest Bank New Mexico, National Association, Albuquerque (006187)	2,457,340,000
and First Bank of Grants, National Association, Grants (023652)	41,317,000
merged on February 20, 1999 under the title of **Norwest Bank New Mexico, National Association, Albuquerque** (006187)	2,498,657,000
First Security Bank of New Mexico, National Association, Albuquerque (013814)	2,461,631,000
and First Security Bank of Southern New Mexico, National Association, Las Cruces (007720)	442,868,000
merged on November 5, 1999 under the title of **First Security Bank of New Mexico, National Association, Albuquerque** (013814)	2,904,499,000
New York	
The Oneida Valley National Bank of Oneida, Oneida (001090)	233,721,000
and First National Bank of Cortland, Cortland (002272)	233,538,000
merged on April 16, 1999 under the title of **Alliance Bank, National Association, Oneida** (001090)	467,259,000
KeyTrust Company National Association, Albany (023313)	32,697,000
and Society Trust Company of New York, Albany	1,452,000
merged on December 1, 1999 under the title of **KeyTrust Company National Association, Albany** (023313)	34,149,000
North Carolina	
NationsBank, National Association, Charlotte (014448)	294,483,000,000
and Bank of America Texas, National Association, Dallas (022429)	5,114,000,000
and Interim Bank of America (NM), National Association, Santa Fe (023832)	396,000,000
merged on April 8, 1999 under the title of **NationsBank, National Association, Charlotte** (014448)	299,993,000,000
Bank of America National Trust and Savings Association, San Francisco (013044)	243,881,000,000
and NationsBank, National Association, Charlotte (014448)	299,993,000,000
merged on July 23, 1999 under the title of **Bank of America, National Association, Charlotte** (013044)	543,423,000,000
First Union National Bank, Charlotte (000001)	222,483,323,000
and Meridian Trust Company, Reading on December 1, 1999	33,872,000
and Keystone Trust Company, Portsmouth on July 16, 1999	422,000
merged on those respective dates under the title of **First Union National Bank, Charlotte** (000001)	222,517,195,000
Bank of America, National Association, Charlotte (013044)	557,532,000,000
and Bank of America Utah, National Association, Salt Lake City (023976)	29,622,000,000
merged on December 1, 1999 under the title of **Bank of America, National Association, Charlotte** (013044)	586,001,000,000
Ohio	
FirstMerit Bank, National Association, Akron (014579)	6,146,930,000
and Signal Bank, National Association, Wooster (023344)	1,347,815,000
and NC Interim National Bank, New Castle (023780)	401,089,000
and Summit Bank, National Association, Akron (023439)	108,266,000
merged on February 12, 1999 under the title of **FirstMerit Bank, National Association, Akron** (014579)	8,702,173,000
Mid American National Bank and Trust Company, Toledo (015416)	989,366,000
and Adrian State Bank, Adrian	175,391,000
merged on January 22, 1999 under the title of **Mid American National Bank and Trust Company, Toledo** (015416)	1,164,757,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
Mid American National Bank and Trust Company, Toledo (015416)	989,366,000
and First National Bank Northwest Ohio, Bryan (013899)	539,633,000
merged on January 22, 1999 under the title of **Mid American National Bank and Trust Company, Toledo** (015416)	1,528,999,000
Firstar Bank, National Association, Cincinnati (000024)	16,750,000
and Firstar Bank Iowa, National Association, Des Moines (016324)	2,949,000
and Firstar Bank Illinois, Chicago	2,732,000
merged on May 27, 1999 under the title of **Firstar Bank, National Association, Cincinnati** (000024)	22,431,000
The Huntington National Bank, Columbus (007745)	28,037,904,000
and The Huntington State Bank, Alexandria	138,054,000
merged on January 29, 1999 under the title of **The Huntington National Bank, Columbus** (007745)	28,175,958,000
National City Bank, Cleveland (000786)	31,049,288,000
and National City Interim Trust Company, West Palm Beach (023894)	7,818,000
merged on June 30, 1999 under the title of **National City Bank, Cleveland** (000786)	31,057,288,000
Firstar Bank, National Association, Cincinnati (000024)	16,750,000,000
and Firstar Bank Milwaukee, National Association, Milwaukee (000064) on October 15, 1999	8,375,000,000
and Firstar Bank Wisconsin, Madison on September 10, 1999	3,969,000,000
and Firstar Bank Wausau, National Association, Wausau (001998) on October 15, 1999	2,940,000
and Firstar Bank Burlington, National Association, Burlington (014395) on September 10, 1999	2,183,000
and Firstar Bank of Minnesota, National Association, St. Paul (016128) on August 13, 1999	2,696,000,000
and Firstar Bank Florida, National Association, West Palm Beach (023747) on August 13, 1999	2,214,000
merged on those respective dates under the title of **Firstar Bank, National Association, Cincinnati** (000024)	36,683,000,000
The Huntington National Bank, Columbus (007745)	28,077,771,000
and Huntington Interim Bank, Columbus	19,127,000
merged on June 30, 1999 under the title of **The Huntington National Bank, Columbus** (007745)	28,096,898,000
KeyBank National Association, Cleveland (014761)	71,855,739,000
and Key Interim National Bank of Michigan, Ann Arbor (023944)	1,069,690,000
merged on August 16, 1999 under the title of **KeyBank National Association, Cleveland** (014761)	72,981,723,000
Key Trust Company of Ohio, National Association, Cleveland (022803)	122,624,000
and Key Interim Trust Bank, Cleveland	2,781,000
merged on September 1, 1999 under the title of **Key Trust Company of Ohio, National Association, Cleveland** (022803)	125,405,000
Sky Trust, National Association, Pepper Pike (023967)	17,000,000
and Mid AM Private Trust, National Association, Cincinnati (023245)	2,000,000
merged on December 30, 1999 under the title of **Sky Trust, National Association, Pepper Pike** (023967)	19,000,000
Firstar Bank, National Association, Cincinnati (000024)	23,305,845,000
and Firstar Metropolitan Bank & Trust, Phoenix	236,486,000
merged on November 12, 1999 under the title of **Firstar Bank, National Association, Cincinnati** (000024)	23,542,331,000
Oklahoma	
Home National Bank, Blackwell (013891)	227,855,000
and Home National Bank, Arkansas City (004487)	210,269,000
merged on June 25, 1999 under the title of **Home National Bank, Blackwell** (013891)	438,124,000
Bank of Oklahoma, National Association, Tulsa (013679)	5,359,811,000
and The First National Bank and Trust Company of Muskogee, Muskogee (004385)	233,104,000
merged on October 15, 1999 under the title of **Bank of Oklahoma, National Association, Tulsa** (013679)	5,592,915,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
Pennsylvania	
First Western Bank, National Association, New Castle (000562)	1,949,179,000
and First Western Services Company, New Castle	2,887,000
merged on September 11, 1998 under the title of **First Western Bank, National Association, New Castle** (000562)	1,952,066,000
The Citizens National Bank of Lansford, Lansford (007051)	175,522,000
and The Citizens National Bank of Slatington, Slatington (006051)	75,197,000
merged on January 22, 1999 under the title of **Citizens National Bank, Lansford** (007051)	250,553,000
Keystone Financial Bank, National Association, Harrisburg (001663)	1,082,281,000
and Financial Trust Company, Carlisle	1,205,324,000
and Keystone National Bank, Lancaster (023176)	115,490,000
and Mid-State Bank and Trust Company, Altoona	1,290,580,000
and Northern Central Bank, Williamsport	1,153,973,000
and American Trust Bank, National Association, Cumberland (023045)	933,884,000
merged on December 31, 1998 under the title of **Keystone Financial Bank, National Association, Harrisburg** (001663)	5,781,532,000
Keystone Financial Bank, National Association, Harrisburg (001663)	5,781,532,000
and Keystone Bank, National Association, Horsham (020221)	1,051,363,000
merged on December 31, 1998 under the title of **Keystone Financial Bank, National Association, Harrisburg** (001663)	6,832,895,000
Keystone Financial Bank, National Association, Harrisburg (001663)	6,721,023,000
and Key Trust Company, Horsham	3,750,000
and Financial Trust Services Company, Carlisle	4,206,000
merged on August 20, 1999 under the title of **Keystone Financial Bank, National Association, Harrisburg** (001663)	6,728,979,000
South Carolina	
First National Bank, Orangeburg (013918)	600,021,000
and FirstBank, National Association, Beaufort (022834)	94,506,000
merged on August 27, 1999 under the title of **First National Bank, Orangeburg** (013918)	694,527,000
South Dakota	
First National Bank South Dakota, Yankton (022764)	316,354,000
and Commercial Trust and Savings Bank, Mitchell	171,594,000
merged on November 5, 1999 under the title of **First National Bank South Dakota, Yankton** (022764)	488,744,000
Tennessee	
National Bank of Commerce, Memphis (013681)	3,839,615,000
and Nashville Bank of Commerce, Nashville	602,942,000
merged on March 1, 1999 under the title of **National Bank of Commerce, Memphis** (013681)	4,442,557,000
Union Planters Bank, National Association, Memphis (013349)	19,815,274,000
and Merchants Bank, Houston	56,933,000
merged on January 31, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	19,872,207,000
First Citizens National Bank, Dyersburg (005263)	331,953,000
and The Bank of Troy, Troy	58,775,000
merged on February 15, 1999 under the title of **First Citizens National Bank, Dyersburg** (005263)	353,860,000
Union Planters Bank, National Association, Memphis (013349)	19,815,274,000
and Bank of LaPlace of St. John the Baptist Parish, Louisana, LaPlace	65,943,000
merged on February 19, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	19,881,217,000
Union Planters Bank, National Association, Memphis (013349)	19,815,274,000
and Charter Bank, S.B., Sparta	367,565,000
merged on March 19, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	20,182,839,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
Union Planters Bank, National Association, Memphis (013349)	27,406,926,000
and AmBank Indiana, National Association, Vincennes (003864)	443,901,000
and AmBank Illinois, National Association, Robinson (013605)	250,164,000
merged on May 7, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	30,959,419,000
Union Planters Bank, National Association, Memphis (013349)	27,406,926,000
and The First National Bank of Wetumpka, Wetumpka (007568)	190,187,000
merged on May 21, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	27,597,113,000
First Citizens National Bank, Dyersburg (005263)	363,447,000
and First Volunteer Bank, Union City	50,436,000
merged on June 14, 1999 under the title of **First Citizens National Bank, Dyersburg** (005263)	490,656,000
Union Planters Bank, National Association, Memphis (013349)	32,977,865,000
and First and Farmers Bank of Somerset, Inc., Somerset on June 25, 1999	309,834,000
and Bank of Cumberland, Burkesville on June 11, 1999	59,432,000
merged on those respective dates under the title of **Union Planters Bank, National Association, Memphis** (013349)	33,347,131,000
First American National Bank, Nashville (003032)	20,359,042,000
and Peoples Bank, Dickson	145,666,000
merged on June 30, 1999 under the title of **First American National Bank, Nashville** (003032)	20,504,708,000
Union Planters Bank, National Association, Memphis (013349)	27,406,926,000
and Alvin State Bank, Alvin	138,815,000
merged on July 16, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	33,485,946,000
Union Planters Bank, National Association, Memphis (013349)	27,406,926,000
and The First National Bank and Trust Company of Corbin, Corbin (007544)	233,350,000
and First Bank of East Tennessee, National Association, La Follette (022238)	90,360,000
merged on July 9, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	33,809,656,000
Union Planters Bank, National Association, Memphis (013349)	33,128,614,000
and Union Planters Bank of Kentucky, National Association, Paducah (012961)	1,254,245,000
merged on August 13, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	34,382,859,000
Texas	
Norwest Bank Texas, National Association, San Antonio (014208)	9,548,093,000
and First National Bank of Missouri City, Missouri City (017631)	91,644,000
merged on February 20, 1999 under the title of **Norwest Bank Texas, National Association, San Antonio** (014208)	9,640,969,000
Continental National Bank, El Paso (016381)	120,657,000
and First National Bank, Denver City (017365)	781,000
merged on March 30, 1999 under the title of **Continental National Bank, El Paso** (016381)	121,438,000
The Frost National Bank, San Antonio (005179)	6,279,934,000
and Keller State Bank, Keller	71,462,000
merged on January 14, 1999 under the title of **The Frost National Bank, San Antonio** (005179)	6,344,302,000
The First National Bank in Cleburne, Cleburne (013107)	102,503,000
and Cleburne State Bank, Cleburne	82,734,000
merged on March 6, 1999 under the title of **The First National Bank in Cleburne, Cleburne** (013107)	184,507,000
First State Bank, National Association, Abilene (017614)	268,437,000
and Azle State Bank, Azle	100,583,000
merged on March 12, 1999 under the title of **First State Bank, National Association, Abilene** (017614)	368,959,000
Austin Bank, Texas National Association, Jacksonville (005581)	137,044,000
and Austin Bank, Rusk, Texas, Rusk	55,885,000
merged on March 15, 1999 under the title of **Austin Bank, Texas National Association, Jacksonville** (005581)	192,929,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
Norwest Bank Texas, National Association, San Antonio (014208)	9,640,969,000
and First Valley Bank, Harlingen	445,794,000
merged on March 20, 1999 under the title of **Norwest Bank Texas, National Association, San Antonio** (014208)	9,907,642,000
Norwest Bank Texas, National Association, San Antonio (014208)	9,907,642,000
and The First National Bank of Franklin, Franklin (007838)	72,439,000
merged on April 17, 1999 under the title of **Norwest Bank Texas, National Association, San Antonio** (014208)	9,965,203,000
Norwest Bank Texas, National Association, San Antonio (014208)	9,965,203,000
and First Bank Katy, National Association, Katy (023651)	297,561,000
and Mercantile Bank, National Association, Brownsville (012236)	828,530,000
merged on June 19, 1999 under the title of **Norwest Bank Texas, National Association, San Antonio** (014208)	11,063,154,000
Woodforest National Bank, Houston (016892)	504,416,000
and Highlands Bank, Highlands	75,438,000
merged on March 31, 1999 under the title of **Woodforest National Bank, Houston** (016892)	579,854,000
Austin Bank, Texas National Association, Jacksonville (005581)	137,000,000
and Austin Bank, National Association, Longview (018291)	172,000,000
merged on April 12, 1999 under the title of **Austin Bank, Texas National Association, Jacksonville** (005581)	309,000,000
Austin Bank, Texas National Association, Jacksonville (005581)	137,044,000
and Austin Bank, Whitehouse, Texas, National Association, Whitehouse (015544)	84,251,000
merged on May 10, 1999 under the title of **Austin Bank, Texas National Association, Jacksonville** (005581)	221,295,000
Austin Bank, Texas National Association, Jacksonville (005581)	137,044,000
and Austin Bank, Big Sandy, Texas, Big Sandy	21,480,000
merged on April 12, 1999 under the title of **Austin Bank, Texas National Association, Jacksonville** (005581)	158,524,000
The American National Bank of Texas, Terrell (017043)	680,506,000
and The Bank of Van Zandt, Canton	71,359,000
merged on June 1, 1999 under the title of **The American National Bank of Texas, Terrell** (017043)	751,865,000
The Frost National Bank, San Antonio (005179)	6,830,500,000
and Bank of Commerce, Fort Worth	188,923,000
merged on May 20, 1999 under the title of **The Frost National Bank, San Antonio** (005179)	7,052,587,000
ExtraCo Banks, National Association, Temple (013778)	389,523,000
and ExtraCo Banks, National Association, Waco (020014)	114,271,000
merged on May 21, 1999 under the title of **ExtraCo Banks, National Association, Temple** (013778)	503,794,000
Norwest Bank Texas, National Association, San Antonio (014208)	12,389,288,000
and First State Bank, Rio Vista	194,163,000
merged on September 18, 1999 under the title of **Norwest Bank Texas, National Association, San Antonio** (014208)	12,597,294,000
ExtraCo Banks, National Association, Temple (013778)	389,523,000
and Lorena State Bank, Lorena	27,969,000
merged on June 28, 1999 under the title of **ExtraCo Banks, National Association, Temple** (013778)	417,492,000
ExtraCo Banks, National Association, Temple (013778)	389,523,000
and Bank of Troy, Troy	12,567,000
merged on June 28, 1999 under the title of **ExtraCo Banks, National Association, Temple** (013778)	402,090,000
Montwood National Bank, El Paso (016369)	231,934,000
and Continental National Bank, El Paso (016381)	130,917,000
and Sierra Bank, Las Cruces	150,728,000
merged on August 6, 1999 under the title of **State National Bank, El Paso, Texas, El Paso** (016369)	513,579,000

Annual summary of affiliated mergers (continued)

Title and location (charter number)	Total assets
Brookhollow National Bank, Dallas (015929)	109,781,000
and Brookhollow National Bank, Richardson (021357)	19,817,000
merged on July 1, 1999 under the title of **Brookhollow National Bank, Dallas** (015929)	129,549,000
Virginia	
First Community Bank, National Association, Tazewell (023892)	397,960,000
and First Community Bank of Mercer County, Inc., Princeton	436,402,000
and First Community Bank of Southwest Virginia, Inc., Tazewell	106,100,000
and Blue Ridge Bank, Sparta	123,335,000
merged on April 30, 1999 under the title of **First Community Bank, National Association, Tazewell** (023892)	1,063,797,000
West Virginia	
City National Bank of West Virginia, Charleston (014807)	1,476,138,000
and Bank of Raleigh, Beckley on April 26, 1999	402,324,000
and Greenbrier Valley National Bank, Lewisburg (005903) on April 26, 1999	182,533,000
and First National Bank in Marlinton, Marlinton (013783) on April 12, 1999	75,545,000
and The National Bank of Summers of Hinton, Hinton (007998) on April 26, 1999	77,332,000
and The Twentieth Street Bank, Huntington on April 26, 1999	305,830,000
merged on those respective dates under the title of **City National Bank of West Virginia, Charleston** (014807)	2,519,702,000
First Century Bank, National Association, Bluefield (004643)	257,450,371,000
and First Century Bank, Wytheville	38,361,670,000
merged on May 7, 1999 under the title of **First Century Bank, National Association, Bluefield** (004643)	294,511,533,000
Wisconsin	
Associated Bank Green Bay, National Association, Green Bay (002132)	1,362,930,000
and Citizens Bank National Association, Shawano (021289)	139,349,000
merged on June 18, 1999 under the title of **Associated Bank Green Bay, National Association, Green Bay** (002132)	1,502,279,000
Associated Interim Bank Green Bay, National Association, Green Bay (023695)	252,362,000
and Associated Bank Green Bay, National Association, Green Bay (002132)	1,357,874,000
merged on November 12, 1998 under the title of **Associated Bank Green Bay, National Association, Green Bay** (023695)	1,610,236,000
Associated Interim Bank, National Association, Neenah (023700)	179,072,000
and Associated Bank, National Association, Neenah (001602)	521,012,000
merged on November 12, 1998 under the title of **Associated Bank, National Association, Neenah** (023700)	700,084,000
Associated Interim Bank Lakeshore, National Association, Manitowoc (023701)	122,362,000
and Associated Bank Lakeshore, National Association, Manitowoc (015972)	422,698,000
merged on November 12, 1998 under the title of **Associated Bank Lakeshore, National Association, Manitowoc** (023701)	545,060,000
Amcore Bank, National Association, South Central, Monroe (000230)	26,257,000
and Amcore Bank, Argyle	3,853,000
and Amcore Bank, Mount Horeb, Mount Horeb	8,394,000
merged on November 13, 1998 under the title of **Amcore Bank, National Association, South Central, Monroe** (000230)	38,506,000
Wyoming	
First National Bank in Evanston, Evanston (014570)	78,963,000
and First National Bank—Kemmerer, Kemmerer (016543)	34,314,000
merged on March 22, 1999 under the title of **First National Bank in Evanston, Evanston** (014570)	113,277,000

Annual summary of affiliated mergers—thrift (mergers consummated involving affiliated national banks and savings and loan associations), January 1 to December 31, 1999

Title and location (charter number)	Total assets
Illinois	
The Pontiac National Bank, Pontiac (014260)	170,709,000
and Home Guaranty Bank, S.B., Piper City	16,274,000
merged on January 1, 1999 under the title of **The Pontiac National Bank, Pontiac** (014260)	185,401,000
AMCORE Bank National Association, Rockford, South Beloit (013652)	1,857,094,000
and AMCORE Bank National Association, Rock River Valley, Dixon (014366)	637,227,000
and AMCORE Bank National Association, Northwest, Woodstock (014137)	265,550,000
and AMCORE Bank, National Association, North Central, Mendota (013611)	442,877,000
and AMCORE Bank, National Association, South Central, Monroe (000230)	630,680,000
and AMCORE Bank, Aledo, Aledo	141,769,000
and AMCORE Bank, Clinton, Clinton	241,176,000
and AMCORE Bank, Montello, Montello	73,870,000
and AMCORE Bank, Central Wisconsin, Baraboo	241,176,000
merged on October 1, 1999 under the title of **AMCORE Bank, National Association, South Beloit** (013652)	4,158,807,000
North Carolina	
First Charter National Bank, Concord (003903)	848,829,000
and Home Federal Savings and Loan, Charlotte	996,476,000
merged on March 18, 1999 under the title of **First Charter National Bank, Concord** (003903)	1,837,599,000
Ohio	
The Second National Bank of Warren, Warren (002479)	963,960,000
and Trumbull Savings and Loan Company, Warren	508,715,000
merged on November 18, 1998 under the title of **The Second National Bank of Warren, Warren** (002479)	1,472,675,000
Fifth Third Bank, Northwestern Ohio, National Association, Toledo (014586)	4,825,131,000
and The Strongsville Savings Bank, Strongsville	667,667,000
merged on August 6, 1999 under the title of **Fifth Third Bank, Northwestern Ohio, National Association, Toledo** (014586)	5,492,798,000
Tennessee	
Union Planters Bank, National Association, Memphis (013349)	27,406,926,000
and First Mutual Bank, S.B., Decatur	404,006,000
merged on May 21, 1999 under the title of **Union Planters Bank, National Association, Memphis** (013349)	27,810,932,000
Texas	
Southwest Bank of Texas National Association, Houston (017479)	1,983,330,000
and Fort Bend Federal Savings & Loan Association of Rosenberg, Rosenberg	327,495,000
merged on April 1, 1999 under the title of **Southwest Bank of Texas National Association, Houston** (017479)	2,310,825,000

Changes in the corporate structure of the national banking system, by state, July 1 to December 31, 1999

	In operation July 1, 1999	Organized and opened for business	Merged	Voluntary liquidations	Payouts	12 USC 214		In operation December 31, 1999
						Converted to non-national institutions	Merged with non-national institutions	
Alabama	27	0	0	0	0	1	1	25
Alaska	4	0	0	0	0	0	0	4
Arizona	17	2	0	0	0	0	0	19
Arkansas	53	0	0	0	0	1	1	51
California	98	4	0	0	0	2	2	97
Colorado	61	1	1	0	0	0	1	60
Connecticut	10	0	0	0	0	0	1	9
Delaware	19	2	1	0	0	0	0	20
District of Columbia	7	0	0	0	0	0	0	7
Florida	93	10	3	0	0	0	4	96
Georgia	67	5	0	0	0	0	0	72
Hawaii	1	0	0	0	0	0	0	1
Idaho	1	1	0	0	0	0	0	2
Illinois	222	0	8	0	0	1	1	212
Indiana	43	0	4	0	0	0	0	39
Iowa	49	2	1	0	0	2	0	48
Kansas	110	0	1	0	0	0	0	109
Kentucky	63	0	4	0	0	0	0	59
Louisiana	20	0	0	1	0	0	0	19
Maine	7	0	0	0	0	0	0	7
Maryland	17	1	0	0	0	1	0	17
Massachusetts	21	2	0	0	0	0	0	23
Michigan	37	1	1	0	0	0	0	37
Minnesota	141	1	4	0	0	0	0	138
Mississippi	20	0	0	0	0	0	0	20
Missouri	51	2	2	0	0	0	0	51
Montana	19	0	0	0	0	0	0	19
Nebraska	94	0	0	0	0	0	2	92
Nevada	8	0	0	0	0	0	0	8
New Hampshire	7	0	0	0	0	0	0	7
New Jersey	27	0	0	0	0	0	0	27
New Mexico	20	0	1	0	0	0	0	19
New York	67	0	0	0	0	0	0	67
North Carolina	10	0	1	0	0	0	0	10
North Dakota	18	0	0	0	0	0	0	18
Ohio	99	1	1	0	0	0	0	99
Oklahoma	118	0	1	0	0	1	0	116
Oregon	5	0	0	0	0	0	0	5
Pennsylvania	100	1	1	0	0	0	3	97
Rhode Island	2	0	0	0	0	0	0	2
South Carolina	22	1	2	0	0	0	0	21
South Dakota	24	0	0	0	0	0	0	24
Tennessee	34	0	1	0	0	0	0	33
Texas	397	2	5	0	0	2	8	384
Utah	8	1	1	0	0	0	0	8
Vermont	12	0	0	0	0	0	0	12
Virginia	36	4	0	0	0	0	3	37
Washington	18	0	0	0	0	0	0	18
West Virginia	27	0	0	0	1	0	0	26
Wisconsin	60	0	3	0	0	0	0	57
Wyoming	20	0	0	0	0	0	0	20
United States	2,511	44	46	1	1	11	27	2,469

Notes: The column "organized and opened for business" includes all state banks converted to national banks as well as newly formed national banks. The column titled "merged" includes all mergers, consolidations, and purchases and assumptions of branches in which the resulting institution is a nationally chartered bank. Also included in this column are immediate FDIC-assisted "merger" transactions in which the resulting institution is a nationally chartered bank. The column titled "voluntary liquidations" includes only straight liquidations of national banks. No liquidation pursuant to a purchase and assumption transaction is included in this total. Liquidations resulting from purchases and assumptions are included in the "merged" column. The column titled "payouts" includes failed national banks in which the FDIC is named receiver and no other depository institution is named as successor. The column titled "merged with non-national institutions" includes all mergers, consolidations, and purchases and assumptions of branches in which the resulting institution is a non-national institution. Also included in this column are immediate FDIC-assisted "merger" transactions in which the resulting institution is a non-national institution.

Applications for new, full-service national bank charters, approved and denied, by state, July 1 to December 31, 1999

Title and location	Approved	Denied
Alabama		
Alabama Trust Bank, National Association, Sylacauga	July 16	
Arizona		
Desert Valley National Bank at Cave Creek, Cave Creek	December 9	
California		
Armed Forces Bank of California, National Association, San Diego	August 26	
Chino Commercial Bank, National Association, Chino	November 16	
Florida		
Banco Popular, National Association, Orlando	July 30	
CIBC National Bank, Maitland	July 9	
The Commercial Bank of Highlands County, National Association, Sebring	August 27	
Georgia		
Cumberland National Bank, St. Marys	July 1	
First National Bank of Gwinnett, Gwinnett County	December 9	
The National Bank of Georgia, Athens	October 26	
Illinois		
Baytree National Bank & Trust Company, Chicago	December 28	
Kentucky		
Henderson National Bank, Henderson	November 1	
Michigan		
Key Interim National Bank of Michigan, Ann Arbor	August 11	
New Jersey		
Banco Portugues do Atlantico, National Association, Newark	September 13	
Ohio		
Ohio Legacy Bank, National Association, Wooster	November 1	
The Citizens National Bank of Southwestern Ohio, Dayton	August 16	
Oklahoma		
Oklahoma National Bank, Tulsa	October 8	
South Carolina		
First National Bank of Spartanburg, Spartanburg	November 12	
Greenville First Bank, National Association, Greenville	September 21	
Lowcountry National Bank, Beaufort	September 29	
Texas		
Parkway Bank, National Association, Plano	August 12	
Virginia		
Bank of Powhatan, National Association, Powhatan	October 12	
Cardinal Bank—Alexandria/Arlington, National Association, Alexandria	December 30	
Smith River Community Bank, National Association, Martinsville	August 4	
Wisconsin		
New National Bank of Commerce in Superior, Superior	August 30	

Applications for new, limited-purpose national bank charters, approved and denied, by state, July 1 to December 31, 1999

Title and location	Type of Bank	Approved	Denied
Arkansas			
Simmons First Trust Company, National Association, Pine Bluff	Trust (non-deposit)	October 4	
Delaware			
Bank of America Trust Company of Delaware, National Association, Greenville	Trust (non-deposit)	August 6	
Ilinois			
Wheaton College Trust Company, National Association, Wheaton	Trust (non-deposit)	September 7	
Kansas			
First Trust Company of Onaga, National Association, Onaga	Trust (non-deposit)	August 3	
Massachusetts			
FIRSTFED Trust Company, National Association, Swansea	Trust (non-deposit)	November 22	
Ohio			
Sky Trust, National Association, Pepper Pike	Trust (non-deposit)	October 21	
Oregon			
Bank of America Oregon, National Association, Portland	Banker's bank	December 15	
Pennsylvania			
Allfirst Trust Company of Pennsylvania, National Association, Harrisburg	Trust (non-deposit)	August 6	

New, full-service national bank charters issued, July 1 to December 31, 1999

Title and location	Charter number	Date opened
Arizona		
First Bank of Arizona, National Association, Scottsdale	023876	September 10
California		
Armed Forces Bank of California, National Association, San Diego	023946	October 25
South County Bank, National Association, Rancho Santa Margarita	023801	October 21
Generations Trust Bank, National Association, Long Beach	023875	August 27
Bessemer Trust Company of California, National Association, San Francisco	023869	September 1
Delaware		
Commerce Bank/Delaware, National Association, Wilmington	023558	December 18
Bank of America Trust Company of Delaware, National Association, Greenville	023921	September 30
Florida		
Century National Bank, Orlando	023895	November 15
CIBC National Bank, Maitland	023848	October 13
Citizens National Bank of Southwest Florida, Naples	023782	August 24
Heartland National Bank, Sebring	023773	September 7
Suncoast National Bank, Sarasota	023772	September 7
First National Bank of Nassau County, Fernandina Beach	023766	July 26
Firstar Bank Florida, National Association, West Palm Beach	023747	August 13
Community National Bank of Mid-Florida, Lake Mary	023732	August 2
Marine National Bank of Naples, Naples	023719	October 12
First National Bank, Orange Park	023660	November 22
Georgia		
Cumberland National Bank, St. Marys	023917	October 1
Alliance National Bank, Dalton	023871	October 25
Cherokee Bank, National Association, Canton	023841	July 26
First National Bank of Johns Creek, Suwanee	023820	September 1
United Americas Bank, National Association, Atlanta	023781	September 20
Iowa		
New National Bank of Davenport, Davenport	023827	December 17
Maryland		
Harbor Capital National Bank, Rockville	023850	December 14
Michigan		
Key Interim National Bank of Michigan, Ann Arbor	023944	August 16
Missouri		
Old Missouri National Bank, Springfield	023881	July 26
Ohio		
Sky Trust, National Association, Pepper Pike	023967	December 16
Pennsylvania		
Allfirst Trust Company of Pennsylvania, National Association, Harrisburg	023916	December 1
South Carolina		
Cornerstone National Bank, Easley	023870	September 15
Texas		
Parkway Bank, National Association, Plano	023909	December 15
First National Bank of Hereford, Hereford	023692	December 6
Virginia		
Access National Bank, Chantilly	023880	November 30
Cardinal Bank—Dulles, National Association, Reston	023878	August 2
The Bank of Richmond, National Association, Richmond	023866	July 15
Cardinal Bank—Manassas/Prince William, National Association, Manassas	023857	July 26

State-chartered banks converted to full-service national banks, July 1 to December 31, 1999

Title and location	Effective date	Total assets
Arizona		
Stearns Bank Arizona, National Association (023932)		
conversion of Stearns Bank, Arizona, Scottsdale	October 8	38,993,000
Colorado		
UMB Bank Colorado, National Association (023905)		
conversion of UMB Bank Colorado, Denver	July 26	351,668,000
Iowa		
Bankers Trust Company, National Association (023958)		
conversion of Bankers Trust Company, Des Moines	November 15	973,813,000
Massachusetts		
PNC Advisors, National Association (023938)		
conversion of PNC Bank, New England, Boston	August 1	1,286,675,000
Cape Cod Bank and Trust Company, National Association (023947)		
conversion of Cape Cod Bank and Trust Company, Hyannis	September 1	1,185,027,000
Minnesota		
New Woodlands National Bank (023926)		
conversion of Rural American Bank—Hinckley, Hinckley	November 1	33,147,000
Missouri		
UMB Bank Cass County, National Association (023920)		
conversion of UMB Bank, Cass County, Peculiar	August 28	31,842,000

Other institution converted to full-service national bank, July 1 to December 31, 1999

Title and location (charter number)	Effective date	Total assets
Idaho		
Wealth Bank, National Association (023997)		
conversion of Idaho Trust Company, Coeur d'Alene	December 28	3,129,000,000

Nonbanking institutions converted to full-service national banks, July 1 to December 31, 1999

Title and location (charter number)	Effective date	Total assets
California		
Bay View Bank, National Association (023770)		
conversion of Bay View Bank, National Association, San Mateo	March 1	5,659,635,000
Utah		
Bank of America Utah, National Association (023976)		
conversion of Bank of America, Federal Savings Bank, Salt Lake City	December 1	29,622,000,000

National banks merged out of the national banking system, July 1 to December 31, 1999

Title and location	Charter number	Effective date
Alabama		
Citizens National Bank, Valley	015090	August 18
Arkansas		
The Arkansas Bank, National Association, Batesville	022543	September 10
California		
First Valley National Bank, Lancaster	021992	December 1
Orange National Bank, Orange	016811	October 4
Colorado		
The First National Bank of Johnstown, Johnstown	008636	November 9
Connecticut		
First International Bank, National Association, Hartford	014750	July 1
Florida		
Regions Bank, National Association, Bradenton	021613	October 7
Citizens First National Bank, Crescent City	017788	July 1
SunTrust Bank, Tallahassee, National Association, Tallahassee	018089	July 6
Illinois		
First National Bank of Rossville, Rossville	005398	June 21
Nebraska		
Pinnacle Bank, National Association, Central City	013148	November 20
Stockmens National Bank, Rushville	009191	October 1
Pennsylvania		
First Philson Bank, National Association, Berlin	005307	July 15
First Western Bank, National Association, New Castle	000562	August 6
Heritage National Bank, Pottsville	000649	December 31, 1998
Texas		
Hartland Bank, National Association, Austin	017513	October 20
The Commercial National Bank of Beeville, Beeville	004866	October 1
The First National Bank of Carthage, Carthage	006197	July 21
Texas Central Bank, National Association, Dallas	020980	August 28
Duncanville National Bank, Duncanville	018244	August 26
The Harlingen National Bank, Harlingen	014776	October 1
First American Bank, National Association, Sulphur Springs	015250	August 27
Virginia		
The First National Bank of Clifton Forge, Clifton Forge	006008	July 16
MainStreet Trust Company, National Association, Martinsville	023149	July 19
Tysons National Bank, McLean	022130	July 16

National banks converted out of the national banking system, July 1 to December 31, 1999

Title and location (charter number)	Effective date	Total assets
Alabama		
First Citizens Bank, National Association, Talladega (009580)	December 20	90,661,000
Arkansas		
First National Bank of Siloam Springs, Siloam Springs (015665)	August 1	215,820,000
California		
Auburn National Bank, Auburn (023420)	July 29	23,300,000
Downey National Bank, Downey (018687)	October 1	63,000,000
Illinois		
First National Bank of Wheaton, Wheaton (016584)	November 5	47,964,000
Iowa		
Bank Iowa, National Association, Denison (018363)	June 30	41,000,000
Bank Iowa, National Association, Red Oak (005738)	June 30	82,117,000
Maryland		
Sequoia National Bank, Bethesda (021392)	October 1	205,000,000
Oklahoma		
The Union National Bank of Chandler, Chandler (006269)	July 1	40,430,000
Texas		
Lone Star Bank, National Association, Houston (020016)	July 20	71,841,000
The Plains National Bank of West Texas, Lubbock (014749)	September 1	865,069,000

Failed national bank paid out by the FDIC, July 1 to December 31, 1999

Title and location (charter number)	Effective date
West Virginia	
The First National Bank of Keystone, Keystone (010369)	September 1

Failed national banks acquired by other than national banks, July 1 to December 31, 1999

Title and location (charter number)	Effective date
Florida	
Peoples National Bank of Commerce, Miami, Miami (014885)	September 10
Texas	
East Texas National Bank of Marshall, Marshall (018297)	July 9

National banks in voluntary liquidation,
July 1 to December 31, 1999

Title and location (charter number)	Effective date	Total assets
Louisana		
United Credit Card Bank, National Association, Baton Rouge (023169)	September 30	2,476,000

Federal branches and agencies of foreign banks in operation, July 1 to December 31, 1999

	In operation July 1, 1999	Opened July 1–December 31	Closed July 1–December 31	In operation December 31, 1999
Federal branches				
California	2	0	1	1
Connecticut	1	0	0	1
District of Columbia	1	0	0	1
New York	42	0	1	41
Washington	1	0	0	1
Limited federal branches				
California	8	0	0	8
District of Columbia	2	0	1	1
New York	3	0	0	3
Federal agency				
Illinois	1	0	0	1
Total United States	61	0	3	58

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Tables are provided by the Economic Analysis Division and include data for nationally chartered, FDIC-insured commercial banks that file a quarter-end call report. Data for the current period are preliminary and subject to revision. Figures in the tables may not sum to totals because of rounding.

Assets, liabilities, and capital accounts of national banks
December 31, 1998 and December 31, 1999
(Dollar figures in millions)

	December 31,1998	December 31,1999	Change December 31,1998–December 31, 1999 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,456	2,365	(91)	(3.71)
Total assets	$3,183,324	$3,271,469	$88,145	2.77
Cash and balances due from depositories	222,131	199,421	(22,710)	(10.22)
Noninterest-bearing balances, currency and coin	156,912	148,907	(8,005)	(5.10)
Interest bearing balances	65,219	50,514	(14,705)	(22.55)
Securities	516,084	537,050	20,966	4.06
Held-to-maturity securities, amortized cost	56,440	46,736	(9,704)	(17.19)
Available-for-sale securities, fair value	459,644	490,314	30,669	6.67
Federal funds sold and securities purchased	123,477	93,713	(29,765)	(24.11)
Net loans and leases	1,978,752	2,090,497	111,745	5.65
Total loans and leases	2,015,562	2,128,124	112,562	5.58
Loans and leases, gross	2,017,601	2,130,016	112,415	5.57
Less: Unearned income	2,039	1,892	(148)	(7.25)
Less: Reserve for losses	36,810	37,628	817	2.22
Assets held in trading account	99,353	89,874	(9,478)	(9.54)
Other real estate owned	1,833	1,571	(262)	(14.28)
Intangible assets	65,388	76,922	11,534	17.64
All other assets	176,307	182,422	6,115	3.47
Total liabilities and equity capital	3,183,324	3,271,469	88,145	2.77
Deposits in domestic offices	1,785,856	1,776,290	(9,566)	(0.54)
Deposits in foreign offices	352,090	378,147	26,057	7.40
Total deposits	2,137,946	2,154,437	16,491	0.77
Noninterest-bearing deposits	442,875	418,810	(24,065)	(5.43)
Interest-bearing deposits	1,695,071	1,735,627	40,556	2.39
Federal funds purchased and securities sold	267,384	252,468	(14,916)	(5.58)
Demand notes issued to U.S. Treasury	6,746	34,378	27,632	409.63
Other borrowed money	262,300	328,879	66,580	25.38
With remaining maturity of one year or less	164,240	218,994	54,754	33.34
With remaining maturity of more than one year	98,060	109,885	11,826	12.06
Trading liabilities less revaluation losses	17,855	16,487	(1,368)	(7.66)
Subordinated notes and debentures	53,068	55,025	1,957	3.69
All other liabilities	163,818	151,683	(12,134)	(7.41)
Trading liabilities revaluation losses	60,009	55,041	(4,968)	(8.28)
Other	103,808	96,642	(7,166)	(6.90)
Total equity capital	274,209	278,111	3,903	1.42
Perpetual preferred stock	465	921	456	97.92
Common stock	17,251	14,925	(2,326)	(13.48)
Surplus	140,401	148,713	8,312	5.92
Net undivided profits and capital reserves	116,982	114,493	(2,489)	(2.13)
Cumulative foreign currency translation adjustment	(891)	(942)	(51)	NM

NM indicates calculated percent change is not meaningful.

Quarterly income and expenses of national banks
Fourth quarter 1998 and fourth quarter 1999
(Dollar figures in millions)

	Fourth quarter 1998	Fourth quarter 1999	Change Fourth quarter 1998–fourth quarter 1999 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,456	2,365	(91)	(3.71)
Net income	$8,803	$10,133	$1,330	15.11
Net interest income	28,802	29,093	291	1.01
Total interest income	54,474	57,535	3,061	5.62
On loans	41,643	44,317	2,673	6.42
From lease financing receivables	1,599	1,753	154	9.61
On balances due from depositories	878	818	(60)	(6.79)
On securities	8,168	8,689	521	6.38
From assets held in trading account	808	648	(160)	(19.75)
On federal funds sold and securities repurchased	1,376	1,310	(67)	(4.85)
Less: Interest expense	25,672	28,442	2,771	10.79
On deposits	17,929	17,561	(368)	(2.05)
Of federal funds purchased and securities sold	3,135	3,434	299	9.53
On demand notes and other borrowed money*	3,743	6,482	2,739	73.17
On subordinated notes and debentures	862	965	103	11.99
Less: Provision for losses	3,775	4,088	313	8.28
Noninterest income	23,043	24,994	1,951	8.47
From fiduciary activities	2,424	2,614	189	7.81
Service charges on deposits	3,583	3,846	263	7.33
Trading revenue				
From interest rate exposures	246	274	27	11.14
From foreign exchange exposures	617	556	(61)	(9.95)
From equity security and index exposures	73	140	67	NM
From commodity and other exposures	(9)	42	51	NM
Total other noninterest income	16,106	17,522	1,416	8.79
Gains/losses on securities	736	(231)	(968)	NM
Less: Noninterest expense	35,740	34,406	(1,334)	(3.73)
Salaries and employee benefits	12,712	13,058	346	2.72
Of premises and fixed assets	4,133	4,350	217	5.25
Other noninterest expense	18,894	16,998	(1,897)	(10.04)
Less: Taxes on income before extraordinary items	4,254	5,364	1,110	26.09
Income/loss from extraordinary items, net of income taxes	(8)	136	144	(1,740.99)
Memoranda:				
Net operating income	8,303	10,161	1,857	22.37
Income before taxes and extraordinary items	13,066	15,361	2,296	17.57
Income net of taxes before extraordinary items	8,812	9,997	1,186	13.46
Cash dividends declared	7,311	8,639	1,329	18.17
Net charge-offs to loan and lease reserve	3,934	3,944	10	0.24
Charge-offs to loan and lease reserve	4,898	4,991	93	1.89
Less: Recoveries credited to loan and lease reserve	964	1,047	83	8.63

* Includes mortgage indebtedness
NM indicates calculated percent change is not meaningful.

Year-to-date income and expenses of national banks
Through December 31, 1998 and through December 31, 1999
(Dollar figures in millions)

	December 31, 1998	December 31, 1999	Change December 31,1998–December 31, 1999 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,456	2,365	(91)	(3.71)
Net income	**$37,623**	**$42,673**	**$5,050**	**13.42**
Net interest income	**110,985**	**114,535**	**3,550**	**3.20**
Total interest income	214,000	216,609	2,608	1.22
On loans	164,568	165,663	1,094	0.67
From lease financing receivables	6,092	6,916	825	13.54
On balances due from depositories	3,565	2,999	(567)	(15.90)
On securities	30,868	33,486	2,618	8.48
From assets held in trading account	3,307	2,529	(778)	(23.53)
On federal funds sold and securities repurchased	5,600	5,016	(584)	(10.42)
Less: Interest expense	103,015	102,074	(942)	(0.91)
On deposits	71,690	66,456	(5,233)	(7.30)
Of federal funds purchased and securities sold	12,395	12,407	12	0.10
On demand notes and other borrowed money*	15,681	19,704	4,023	25.65
On subordinated notes and debentures	3,249	3,506	257	7.90
Less: Provision for losses	**15,243**	**15,471**	**228**	**1.50**
Noninterest income	**81,347**	**92,722**	**11,375**	**13.98**
From fiduciary activities	9,111	9,849	739	8.11
Service charges on deposits	13,702	14,741	1,039	7.59
Trading revenue	3,633	4,692	1,059	29.15
From interest rate exposures	945	1,810	865	91.45
From foreign exchange exposures	2,445	2,456	11	0.44
From equity security and index exposures	227	368	141	62.20
From commodity and other exposures	15	57	42	286.02
Total other noninterest income	54,901	63,439	8,538	15.55
Gains/losses on securities	**2,313**	**138**	**(2,175)**	**(94.03)**
Less: Noninterest expense	**122,582**	**125,847**	**3,264**	**2.66**
Salaries and employee benefits	46,485	49,062	2,577	5.54
Of premises and fixed assets	14,754	15,741	987	6.69
Other noninterest expense	61,342	61,043	(299)	(0.49)
Less: Taxes on income before extraordinary items	**19,715**	**23,508**	**3,793**	**19.24**
Income/loss from extraordinary items, net of income taxes	**518**	**104**	**(414)**	**NM**
Memoranda:				
Net operating income	35,564	42,494	6,930	19.49
Income before taxes and extraordinary items	56,821	66,077	9,257	16.29
Income net of taxes before extraordinary items	37,105	42,569	5,463	14.72
Cash dividends declared	25,415	29,876	4,461	17.55
Net charge-offs to loan and lease reserve	14,492	14,160	(332)	(2.29)
Charge-offs to loan and lease reserve	18,392	17,999	(392)	(2.13)
Less: Recoveries credited to loan and lease reserve	3,900	3,839	(61)	(1.56)

* Includes mortgage indebtedness
NM indicates calculated percent change is not meaningful.

Assets of national banks by asset size
December 31, 1999
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All Commercial banks
Number of institutions reporting	2,365	1,203	985	131	46	8,580
Total assets	$3,271,469	$60,596	$263,738	$393,476	$2,553,660	$5,734,843
Cash and balances due from	199,421	3,601	12,861	22,163	160,796	366,498
Securities	537,050	16,507	68,326	90,860	361,357	1,046,171
Federal funds sold and securities purchased	93,713	2,797	7,293	10,361	73,262	226,305
Net loans and leases	2,090,497	34,868	162,130	242,244	1,651,254	3,432,603
Total loans and leases	2,128,124	35,335	164,518	247,347	1,680,925	3,491,359
Loans and leases, gross	2,130,016	35,429	164,799	247,430	1,682,358	3,495,030
Less: Unearned income	1,892	94	282	83	1,434	3,670
Less: Reserve for losses	37,628	467	2,388	5,103	29,671	58,757
Assets held in trading account	89,874	16	218	650	88,990	257,272
Other real estate owned	1,571	63	206	161	1,142	2,792
Intangible assets	76,922	213	1,692	8,040	66,976	98,041
All other assets	182,422	2,531	11,013	18,996	149,883	305,162
Gross loans and leases by type:						
Loans secured by real estate	853,173	20,152	99,764	119,451	613,805	1,509,758
1–4 family residential mortgages	433,832	9,519	45,123	57,299	321,891	736,793
Home equity loans	67,269	425	4,179	7,462	55,203	102,347
Multifamily residential mortgages	26,557	458	3,376	4,387	18,336	53,121
Commercial RE loans	214,175	5,830	34,445	36,094	137,806	417,475
Construction RE loans	71,562	1,582	8,621	12,370	48,988	135,568
Farmland loans	11,954	2,338	4,002	1,642	3,972	31,897
RE loans from foreign offices	27,825	0	18	197	27,610	32,558
Commercial and industrial loans	622,092	6,036	29,053	49,885	537,119	971,129
Loans to individuals	348,556	5,011	25,807	62,422	255,316	558,465
Credit cards	147,091	258	5,405	32,050	109,379	211,961
Installment loans	201,465	4,753	20,403	30,372	145,937	346,505
All other loans and leases	182,422	2,531	11,013	18,996	149,883	305,162
Securities by type:						
U.S. Treasury securities	57,022	1,853	6,159	6,186	42,823	113,034
Mortgage-backed securities	240,198	3,468	21,051	45,935	169,744	454,478
Pass-through securities	161,219	2,453	13,163	29,356	116,247	284,956
Collateralized mortgage obligations	78,979	1,015	7,888	16,579	53,498	169,522
Other securities	239,830	11,186	41,117	38,739	148,789	478,659
Other U.S. government securities	80,738	7,753	24,731	19,365	28,889	207,869
State and local government securities	39,941	2,666	11,549	7,779	17,947	89,164
Other debt securities	96,921	400	3,065	8,110	85,347	144,396
Equity securities	22,230	367	1,772	3,485	16,606	37,230
Memoranda:						
Agricultural production loans	20,434	3,642	5,055	2,962	8,775	45,276
Pledged securities	282,147	6,061	32,958	45,890	197,238	542,507
Book value of securities	549,685	16,811	69,752	92,604	370,518	1,067,768
Available-for-sale securities	502,949	13,334	56,533	75,572	357,510	922,726
Held-to-maturity securities	46,736	3,477	13,219	17,032	13,008	145,042
Market value of securities	536,186	16,455	68,074	90,523	361,135	1,043,087
Available-for-sale securities	490,314	13,029	55,107	73,828	348,349	901,129
Held-to-maturity securities	45,873	3,426	12,966	16,695	12,786	141,958

Past-due and nonaccrual loans and leases of national banks by asset size
December 31, 1999
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,365	1,203	985	131	46	8,580
Loans and leases past due 30–89 days	$24,619	$449	$1,888	$3,193	$19,089	$39,788
Loans secured by real estate	10,438	220	855	1,144	8,220	16,524
1–4 family residential mortgages	6,978	145	527	666	5,640	10,562
Home equity loans	521	2	25	58	436	770
Multifamily residential mortgages	184	4	19	17	144	306
Commercial RE loans	1,501	38	196	232	1,035	2,866
Construction RE loans	768	12	60	154	542	1,335
Farmland loans	92	18	29	17	28	245
RE loans from foreign offices	395	0	0	0	395	440
Commercial and industrial loans	4,425	128	406	516	3,375	7,755
Loans to individuals	8,226	101	572	1,388	6,166	13,022
Credit cards	3,722	7	211	738	2,766	5,490
Installment loans	4,504	94	361	650	3,400	7,532
All other loans and leases	1,530	1	55	145	1,328	2,486
Loans and leases past due 90+ days	6,287	97	445	1,062	4,684	9,710
Loans secured by real estate	1,553	42	157	259	1,095	2,647
1–4 family residential mortgages	1,135	23	92	181	839	1,780
Home equity loans	79	0	4	16	59	125
Multifamily residential mortgages	22	1	2	3	15	36
Commercial RE loans	188	8	43	45	92	427
Construction RE loans	81	2	5	8	66	157
Farmland loans	29	8	10	6	5	93
RE loans from foreign offices	19	0	0	0	19	28
Commercial and industrial loans	537	38	78	64	357	1,056
Loans to individuals	3,905	17	200	728	2,961	5,608
Credit cards	2,634	3	147	557	1,928	3,487
Installment loans	1,271	14	53	171	1,033	2,121
All other loans and leases	292	0	10	12	271	398
Nonaccrual loans and leases	14,510	230	863	1,006	12,411	23,291
Loans secured by real estate	5,866	109	435	523	4,799	9,214
1–4 family residential mortgages	2,802	36	171	211	2,385	4,265
Home equity loans	111	2	7	12	90	190
Multifamily residential mortgages	95	2	8	12	73	186
Commercial RE loans	1,625	35	185	234	1,171	2,781
Construction RE loans	373	7	25	37	304	748
Farmland loans	160	27	40	17	76	302
RE loans from foreign offices	700	0	0	0	700	741
Commercial and industrial loans	6,353	103	328	355	5,566	10,365
Loans to individuals	1,369	15	70	77	1,206	2,319
Credit cards	296	1	21	36	238	854
Installment loans	1,073	15	49	42	968	1,465
All other loans and leases	922	2	30	51	839	1,392

Liabilities of national banks by asset size
December 31, 1999
(Dollar figures in millions)

	National banks					Memoranda:
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	All commercial banks
Number of institutions reporting	2,365	1,203	985	131	46	8,580
Total liabilities and equity capital	$3,271,469	$60,596	$263,738	$393,476	$2,553,660	$5,734,843
Deposits in domestic offices	$1,776,290	$51,300	$210,350	$251,933	$1,262,708	$3,175,187
Deposits in foreign offices	378,147	0	496	2,759	374,892	655,589
Total deposits	2,154,437	51,300	210,845	254,691	1,637,600	3,830,776
Noninterest to earnings	418,810	8,279	33,873	45,703	330,955	703,090
Interest bearing	1,735,627	43,021	176,972	208,988	1,306,645	3,127,686
Other borrowed funds	632,212	2,174	24,874	90,506	514,658	1,048,820
Subordinated notes and debentures	55,025	3	183	2,659	52,179	76,452
All other liabilities	151,683	592	3,196	7,439	140,455	298,920
Equity capital	278,111	6,526	24,639	38,180	208,767	479,875
Total deposits by depositor:						
Individuals and corporations	1,933,536	46,521	191,828	236,592	1,458,596	3,414,113
U.S., state, and local governments	82,581	4,012	15,284	12,212	51,074	159,937
Depositories in the U.S.	60,986	393	2,278	3,664	54,651	88,359
Foreign banks and governments	65,036	2	190	824	64,020	142,529
Certified and official checks	9,776	374	1,266	1,391	6,746	18,241
All other foreign office deposits	2,521	0	0	9	2,512	7,597
Domestic deposits by depositor:						
Individuals and corporations	1,655,487	46,521	191,511	234,280	1,183,175	2,947,006
U.S., state, and local governments	82,581	4,012	15,284	12,212	51,074	159,937
Depositories in the U.S.	24,271	393	2,233	3,651	17,994	39,864
Foreign banks and governments	5,175	2	56	400	4,718	11,258
Certified and official checks	8,776	374	1,266	1,391	5,747	17,123
Foreign deposits by depositor:						
Individuals and corporations	278,049	0	316	2,312	275,421	467,108
Depositories in the U.S.	36,715	0	45	13	36,657	48,495
Foreign banks and governments	59,861	0	134	424	59,303	131,272
Certified and official checks	1,000	0	0	0	1,000	1,118
All other deposits	2,521	0	0	9	2,512	7,597
Deposits in domestic offices by type:						
Transaction deposits	384,997	15,932	54,770	49,349	264,946	686,816
Demand deposits	311,200	8,271	32,198	38,863	231,868	524,966
NOW accounts	68,488	7,496	22,202	10,203	28,587	154,815
Savings deposits	770,220	10,537	61,065	110,278	588,340	1,262,812
Money market deposit accounts	523,743	5,687	37,340	71,362	409,353	836,191
Other savings deposits	246,477	4,850	23,724	38,916	178,987	426,621
Time deposits	621,074	24,831	94,515	92,306	409,421	1,225,559
Small time deposits	382,666	17,634	64,145	60,474	240,414	743,478
Large time deposits	238,407	7,197	30,370	31,832	169,008	482,081

Off-balance-sheet items of national banks by asset size
December 31, 1999
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	National banks: $100 million to $1 billion	National banks: $1 billion to $10 billion	National banks: Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,365	1,203	985	131	46	8,580
Unused commitments	$2,832,917	$85,868	$171,233	$322,292	$2,253,525	$3,958,516
Home equity lines	105,452	334	4,848	8,968	91,303	145,359
Credit card lines	1,610,376	81,413	139,619	256,391	1,132,953	2,099,898
Commercial RE, construction and land	77,662	1,024	7,255	11,459	57,924	140,418
All other unused commitments	1,039,427	3,097	19,512	45,474	971,345	1,572,841
Letters of credit:						
Standby letters of credit	143,332	146	1,662	6,550	134,974	232,297
Financial letters of credit	114,009	92	1,065	4,824	108,028	191,526
Performance letters of credit	29,323	54	597	1,726	26,945	40,771
Commercial letters of credit	16,898	30	581	618	15,670	26,547
Securities borrowed and lent:						
Securities borrowed	19,390	33	686	4,953	13,718	30,339
Securities lent	70,226	10	1,265	8,624	60,328	382,906
Financial assets transferred with recourse:						
Mortgages—outstanding principal balance	33,869	53	118	5,008	28,690	56,845
Mortgages—amount of recourse exposure	6,354	34	105	453	5,762	11,831
All other—outstanding principal balance	269,685	486	890	57,554	210,754	299,488
All other—amount of recourse exposure	18,240	0	71	2,901	15,268	22,350
Spot foreign exchange contracts	55,363	0	16	8	55,340	66,337
Credit derivatives (notional value)						
Reporting bank is the guarantor	38,339	0	15	0	38,325	128,398
Reporting bank is the beneficiary	44,514	0	0	0	44,514	158,278
Derivative contracts (notional value)	12,077,568	27	2,474	40,605	12,034,462	34,816,882
Futures and forward contracts	3,899,319	7	61	2,853	3,896,398	9,390,420
Interest rate contracts	1,615,522	7	43	2,464	1,613,008	5,095,676
Foreign exchange contracts	2,252,754	0	18	389	2,252,348	4,175,430
All other futures and forwards	31,043	0	0	0	31,043	119,314
Option contracts	2,754,291	20	669	8,478	2,745,124	7,360,827
Interest rate contracts	2,272,026	20	669	8,368	2,262,970	5,794,747
Foreign exchange contracts	311,063	0	0	1	311,062	965,300
All other options	171,201	0	0	109	171,092	600,780
Swaps	5,341,105	0	1,731	29,273	5,310,101	17,778,958
Interest rate contracts	5,067,120	0	1,731	28,606	5,036,784	16,881,272
Foreign exchange contracts	231,510	0	0	656	230,854	774,387
All other swaps	42,475	0	0	12	42,463	123,299
Memoranda: Derivatives by purpose						
Contracts held for trading	11,004,467	4	26	6,430	10,998,006	32,950,342
Contracts not held for trading	990,248	23	2,433	34,174	953,617	1,579,86
Memoranda: Derivatives by position						
Held for trading—positive fair value	133,626	0	0	116	133,510	419,145
Held for trading—negative fair value	133,775	0	0	32	133,743	414,393
Not for trading—positive fair value	5,051	0	15	97	4,939	8,866
Not for trading—negative fair value	7,414	0	8	348	7,058	11,170

Quarterly income and expenses of national banks by asset size
Fourth quarter, 1999
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,365	1,203	985	131	46	8,580
Net income	$10,133	$164	$909	$1,470	$7,590	$17,763
Net interest income	29,093	629	2,734	3,879	21,850	49,248
Total interest income	57,535	1,102	4,881	7,091	44,461	97,190
On loans	44,317	799	3,664	5,364	34,489	72,250
From lease financing receivables	1,753	4	31	67	1,651	2,498
On balances due from depositories	818	11	34	42	732	1,561
On securities	8,689	243	1,034	1,426	5,986	16,092
From assets held in trading account	648	0	2	14	633	1,762
On fed. funds sold & securities repurchased	1,310	45	117	179	969	3,026
Less: Interest expense	28,442	473	2,147	3,211	22,611	47,942
On deposits	17,561	446	1,809	1,980	13,326	31,466
Of federal funds purchased & securities sold	3,434	9	132	557	2,736	5,834
On demand notes & other borrowed money	*6,482	18	203	629	5,632	9,338
On subordinated notes and debentures	965	0	4	45	916	1,305
Less: Provision for losses	4,088	48	276	589	3,175	6,144
Noninterest income	24,994	498	1,485	2,996	20,015	38,827
From fiduciary activities	2,614	5	365	263	1,981	5,319
Service charges on deposits	3,846	79	278	450	3,040	5,640
Trading revenue	1,012	3	2	32	974	2,473
From interest rate exposures	274	3	2	23	246	772
From foreign exchange exposures	556	0	0	1	554	1,004
From equity security and index exposures	140	0	0	6	135	462
From commodity and other exposures	42	0	0	3	40	235
Total other noninterest income	17,522	411	841	2,250	14,020	25,395
Gains/losses on securities	(231)	(2)	(11)	(120)	(98)	(276)
Less: Noninterest expense	34,406	850	2,796	3,991	26,769	54,758
Salaries and employee benefits	13,058	330	1,145	1,319	10,264	21,908
Of premises and fixed assets	4,350	82	318	417	3,533	6,937
Other noninterest expense	16,998	438	1,333	2,255	12,972	25,913
Less: Taxes on income before extraord. items	5,364	63	362	705	4,233	9,336
Income/loss from extraord. items, net of taxes	104	(1)	136	(0)	(31)	169
Memoranda:						
Net operating income	10,161	166	781	1,548	7,666	17,741
Income before taxes and extraordinary items	15,361	228	1,135	2,175	11,823	26,897
Income net of taxes before extraordinary items	9,997	164	773	1,470	7,590	17,561
Cash dividends declared	8,639	230	820	1,690	5,899	16,343
Net loan and lease losses	3,944	39	240	598	3,067	6,019
Charge-offs to loan and lease reserve	4,991	51	296	711	3,933	7,529
Less: Recoveries credited to loan and lease resv.	1,047	11	56	113	866	1,510

* Includes mortgage indebtedness

Year-to-date income and expenses of national banks by asset size
Through December 31, 1999
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,365	1,203	985	131	46	8,580
Net income	$42,673	$700	$3,729	$6,043	$32,201	$71,703
Net interest income	114,535	2,561	10,573	14,920	86,482	192,204
Total interest income	216,609	4,471	18,636	26,638	166,863	367,336
On loans	165,663	3,303	13,957	20,173	128,230	270,725
From lease financing receivables	6,916	12	112	252	6,540	9,885
On balances due from depositories	2,999	41	123	184	2,651	5,922
On securities	33,486	936	3,998	5,343	23,210	61,552
From assets held in trading account	2,529	0	6	59	2,463	7,046
On fed. funds sold & securities repurchased	5,016	179	440	628	3,769	12,206
Less: Interest expense	102,074	1,911	8,063	11,719	80,381	175,132
On deposits	66,456	1,717	6,885	7,524	50,331	119,057
Of federal funds purchased & securities sold	12,407	39	481	1,942	9,946	21,423
On demand notes & other borrowed money	*19,704	150	679	2,083	16,791	29,792
On subordinated notes and debentures	3,506	5	18	170	3,313	4,860
Less: Provision for losses	15,471	298	908	2,059	12,205	21,713
Noninterest income	92,722	1,795	5,718	11,467	73,741	144,456
From fiduciary activities	9,849	17	1,191	1,011	7,630	20,315
Service charges on deposits	14,741	300	1,039	1,670	11,732	21,548
Trading revenue	4,692	11	12	125	4,543	10,249
From interest rate exposures	1,810	11	10	89	1,699	3,793
From foreign exchange exposures	2,456	0	2	(0)	2,455	4,662
From equity security and index exposures	368	0	0	26	342	1,218
From commodity and other exposures	57	0	0	10	47	576
Total other noninterest income	63,439	1,467	3,476	8,660	49,836	92,344
Gains/losses on securities	138	0	9	(95)	224	184
Less: Noninterest expense	125,847	3,083	10,131	15,022	97,611	204,176
Salaries and employee benefits	49,062	1,213	4,378	5,064	38,408	85,456
Of premises and fixed assets	15,741	310	1,213	1,577	12,642	25,795
Other noninterest expense	61,043	1,560	4,540	8,381	46,561	92,925
Less: Taxes on income before extraord. items	23,508	275	1,668	3,166	18,400	39,420
Income/loss from extraord. items, net of taxes	104	(1)	136	(0)	(31)	169
Memoranda:						
Net operating income	42,494	701	3,587	6,104	32,102	71,465
Income before taxes and extraordinary items	66,077	975	5,261	9,210	50,632	110,955
Income net of taxes before extraordinary items	42,569	700	3,593	6,044	32,232	71,534
Cash dividends declared	29,876	516	2,386	4,118	22,856	51,927
Net loan and lease losses	14,160	239	702	2,027	11,192	20,340
Charge-offs to loan and lease reserve	17,999	298	944	2,477	14,280	25,983
Less: Recoveries credited to loan & lease resv.	3,839	59	242	450	3,089	5,643

* Includes mortgage indebtedness

Quarterly net loan and lease losses of national banks by asset size
Fourth quarter 1999
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,365	1,203	985	131	46	8,580
Net charge-offs to loan and lease reserve	$3,944	$39	$240	$598	$3,067	$6,019
Loans secured by real estate	261	4	18	34	206	408
1–4 family residential mortgages	179	1	8	24	145	255
Home equity loans	31	(0)	1	2	28	39
Multifamily residential mortgages	4	0	0	(0)	4	9
Commercial RE loans	15	1	7	6	2	51
Construction RE loans	5	2	1	1	2	23
Farmland loans	3	(0)	1	0	2	7
RE loans from foreign offices	24	0	0	(0)	24	24
Commercial and industrial loans	1,107	24	65	141	877	1,882
Loans to individuals	2,358	12	152	407	1,786	3,282
Credit cards	1,647	1	117	333	1,196	2,252
Installment loans	711	10	36	74	590	1,029
All other loans and leases	218	0	4	15	198	447
Charge-offs to loan and lease reserve	4,991	51	296	711	3,933	7,529
Loans secured by real estate	391	6	23	48	315	581
1–4 family residential mortgages	221	2	11	29	179	309
Home equity loans	41	(0)	1	4	36	53
Multifamily residential mortgages	6	0	0	0	5	12
Commercial RE loans	77	2	8	13	54	131
Construction RE loans	15	1	1	1	11	39
Farmland loans	4	0	1	1	2	10
RE loans from foreign offices	26	0	0	0	26	27
Commercial and industrial loans	1,353	29	80	160	1,084	2,299
Loans to individuals	2,970	16	186	485	2,283	4,111
Credit cards	1,844	2	134	381	1,327	2,567
Installment loans	1,126	14	52	104	956	1,544
All other loans and leases	276	0	6	18	252	538
Recoveries credited to loan and lease reserve	1,047	11	56	113	866	1,510
Loans secured by real estate	130	2	5	14	109	173
1–4 family residential mortgages	42	1	3	4	34	54
Home equity loans	10	0	0	2	8	14
Multifamily residential mortgages	2	(0)	0	0	2	3
Commercial RE loans	62	1	2	7	52	81
Construction RE loans	10	(0)	0	0	10	16
Farmland loans	1	0	0	0	1	3
RE loans from foreign offices	2	0	0	0	2	3
Commercial and industrial loans	246	6	15	18	207	416
Loans to individuals	612	4	34	78	497	829
Credit cards	197	1	18	48	130	315
Installment loans	416	3	16	30	366	514
All other loans and leases	59	0	2	3	54	91

Year-to-date net loan and lease losses of national banks by asset size
Through December 31, 1999
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,365	1,203	985	131	46	8,580
Net charge-offs to loan and lease reserve	14,160	239	702	2,027	11,192	20,340
Loans secured by real estate	793	8	41	100	643	1,128
1–4 family residential mortgages	538	4	22	74	438	754
Home equity loans	120	0	3	12	105	148
Multifamily residential mortgages	4	(0)	1	1	3	7
Commercial RE loans	56	2	13	7	34	109
Construction RE loans	18	2	2	5	9	50
Farmland loans	7	(0)	1	2	5	15
RE loans from foreign offices	50	0	0	(0)	50	45
Commercial and industrial loans	3,263	51	152	270	2,791	5,351
Loans to individuals	9,406	180	495	1,616	7,116	12,716
Credit cards	6,816	152	381	1,369	4,914	9,156
Installment loans	2,590	28	114	247	2,202	3,560
All other loans and leases	698	0	15	40	642	1,145
Charge-offs to loan and lease reserve	17,999	298	944	2,477	14,280	25,983
Loans secured by real estate	1,242	14	63	150	1,014	1,778
1–4 family residential mortgages	654	6	31	89	527	929
Home equity loans	164	0	3	18	143	205
Multifamily residential mortgages	15	0	2	2	11	27
Commercial RE loans	280	4	22	32	223	422
Construction RE loans	44	2	3	8	32	93
Farmland loans	14	1	2	2	9	28
RE loans from foreign offices	71	0	0	0	71	74
Commercial and industrial loans	4,017	70	208	343	3,397	6,697
Loans to individuals	11,767	214	648	1,926	8,979	15,958
Credit cards	7,945	173	470	1,555	5,747	10,767
Installment loans	3,822	41	178	371	3,232	5,190
All other loans and leases	974	1	25	57	890	1,551
Recoveries credited to loan and lease reserve	3,839	59	242	450	3,089	5,643
Loans secured by real estate	449	6	23	50	371	650
1–4 family residential mortgages	116	2	9	15	89	175
Home equity loans	45	0	1	6	38	57
Multifamily residential mortgages	10	0	1	1	8	20
Commercial RE loans	224	2	9	25	189	313
Construction RE loans	26	0	1	2	23	43
Farmland loans	7	1	2	1	3	13
RE loans from foreign offices	21	0	0	0	21	29
Commercial and industrial loans	754	19	56	73	606	1,346
Loans to individuals	2,361	34	153	310	1,863	3,242
Credit cards	1,129	22	89	186	833	1,611
Installment loans	1,232	13	64	124	1,030	1,631
All other loans and leases	275	0	10	17	248	405

Number of national banks by state and asset size
December 31, 1999

		National banks				Memoranda:
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	All commercial banks
All institutions	2,365	1,203	985	131	46	8,580
Alabama	25	11	13	0	1	156
Alaska	3	1	0	2	0	6
Arizona	18	9	4	3	2	45
Arkansas	49	17	31	1	0	195
California	87	34	45	6	2	325
Colorado	59	39	17	2	1	188
Connecticut	7	3	4	0	0	24
Delaware	15	4	7	1	3	33
District of Columbia	5	2	3	0	0	6
Florida	90	38	40	12	0	272
Georgia	71	33	36	2	0	345
Hawaii	1	0	1	0	0	10
Idaho	1	0	1	0	0	17
Illinois	204	92	98	10	4	725
Indiana	33	10	18	3	2	158
Iowa	47	25	20	2	0	439
Kansas	108	80	27	1	0	387
Kentucky	57	29	25	2	1	248
Louisiana	19	10	6	1	2	153
Maine	5	1	4	0	0	16
Maryland	17	5	10	2	0	77
Massachusetts	14	5	6	2	1	45
Michigan	36	16	18	1	1	171
Minnesota	134	79	49	4	2	497
Mississippi	20	7	12	1	0	99
Missouri	50	26	20	3	1	365
Montana	18	14	2	2	0	85
Nebraska	90	65	22	3	0	301
Nevada	8	1	3	4	0	27
New Hampshire	6	2	3	0	1	19
New Jersey	24	2	14	7	1	75
New Mexico	19	6	10	3	0	54
New York	63	16	39	7	1	150
North Carolina	10	2	4	1	3	71
North Dakota	18	8	8	2	0	114
Ohio	94	45	37	6	6	219
Oklahoma	114	76	34	4	0	300
Oregon	4	1	3	0	0	44
Pennsylvania	94	25	62	4	3	193
Rhode Island	2	0	0	1	1	6
South Carolina	21	14	6	1	0	77
South Dakota	23	12	9	1	1	102
Tennessee	32	9	17	4	2	201
Texas	380	249	122	6	3	754
Utah	8	2	3	2	1	51
Vermont	10	3	6	1	0	20
Virginia	35	13	19	3	0	147
Washington	16	13	3	0	0	81
West Virginia	26	10	12	4	0	82
Wisconsin	54	27	25	2	0	337
Wyoming	21	12	7	2	0	50
U.S. territories	0	0	0	0	0	18

Total assets of national banks by state and asset size
December 31, 1999
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	National banks: $100 million to $1 billion	National banks: $1 billion to $10 billion	National banks: Greater than $10 billion	Memoranda: All commercial banks
All institutions	$3,271,469	$60,596	$263,738	$393,476	$2,553,660	$5,734,843
Alabama	47,155	676	3,276	0	43,203	177,790
Alaska	4,532	48	0	4,484	0	5,431
Arizona	44,268	265	1,790	7,532	34,681	47,701
Arkansas	10,723	1,024	8,050	1,648	0	26,726
California	163,455	1,666	14,270	17,848	129,671	286,752
Colorado	23,276	1,879	4,147	5,794	11,455	41,618
Connecticut	872	190	682	0	0	3,156
Delaware	87,086	169	2,161	2,349	82,407	133,239
District of Columbia	536	56	480	0	0	649
Florida	44,723	2,105	9,709	32,908	0	86,271
Georgia	24,480	1,557	10,966	11,957	0	86,238
Hawaii	305	0	305	0	0	23,568
Idaho	219	0	219	0	0	2,114
Illinois	216,074	4,834	24,226	32,795	154,218	328,732
Indiana	40,391	533	7,219	4,677	27,962	65,038
Iowa	12,756	1,331	4,495	6,930	0	44,897
Kansas	13,555	3,644	7,688	2,223	0	34,761
Kentucky	24,666	1,949	4,855	7,716	10,146	51,439
Louisiana	35,509	604	1,190	5,454	28,260	50,781
Maine	1,346	50	1,296	0	0	5,118
Maryland	5,948	307	2,568	3,073	0	45,387
Massachusetts	82,105	256	1,190	2,324	78,335	169,672
Michigan	18,415	845	4,255	2,474	10,840	123,307
Minnesota	136,339	3,638	11,955	8,831	111,915	157,439
Mississippi	9,979	306	2,941	6,731	0	29,515
Missouri	45,647	1,286	5,911	18,424	20,027	80,378
Montana	3,403	570	326	2,507	0	10,138
Nebraska	16,281	2,980	5,143	8,158	0	28,525
Nevada	20,951	34	482	20,436	0	32,218
New Hampshire	13,025	53	633	0	12,339	22,046
New Jersey	52,028	117	4,561	21,572	25,778	107,882
New Mexico	11,977	298	3,240	8,439	0	15,955
New York	354,340	988	11,843	13,610	327,899	1,170,273
North Carolina	868,270	54	1,780	1,875	864,562	936,936
North Dakota	6,280	312	2,478	3,490	0	11,578
Ohio	253,499	2,237	12,835	16,500	221,928	309,282
Oklahoma	24,209	3,868	6,531	13,810	0	39,628
Oregon	640	4	636	0	0	7,156
Pennsylvania	153,554	1,400	19,253	11,536	121,365	195,331
Rhode Island	94,329	0	0	6,588	87,741	102,991
South Carolina	4,145	607	1,809	1,729	0	20,761
South Dakota	24,574	455	3,161	6,167	14,791	31,992
Tennessee	70,076	639	4,852	14,414	50,172	90,424
Texas	128,881	12,531	28,864	21,293	66,192	181,163
Utah	26,817	105	589	8,349	17,774	59,231
Vermont	3,376	181	1,693	1,502	0	7,600
Virginia	13,043	602	4,657	7,784	0	80,684
Washington	1,452	604	849	0	0	13,360
West Virginia	14,183	525	3,183	10,475	0	23,088
Wisconsin	13,242	1,680	7,338	4,225	0	74,221
Wyoming	4,530	530	1,156	2,844	0	7,491
U.S. territories	0	0	0	0	0	47,173

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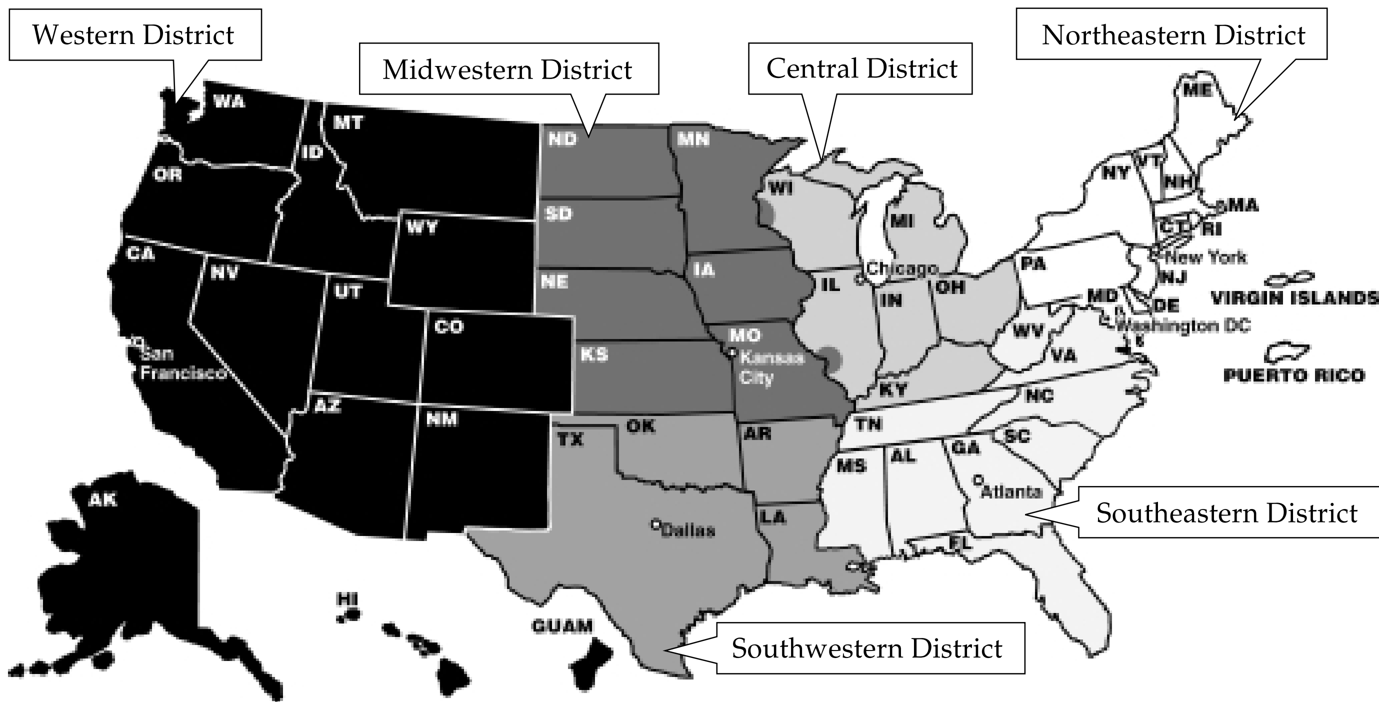

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